

□ Procedure No.: PS/00253/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST:

The Court of A Coruña (hereinafter, the claimant) dated
04/12/2019 has sent to this Agency, on 04/12/2019 the actions
made in relation to some job offers as management secretary. The
demand is directed by the legal representative of PAGE PERSONNEL SELECCION
SPAIN, S.A. (hereinafter PAGE PERSONNEL) against D. A.A.A. with NIF ***NIF.1
(hereinafter, the claimed). The reasons on which the claim is based are: that several
people with whom PAGE PERSONNEL has contact warn you that for a long time
time they received emails from various accounts informing them
of job offers allegedly made on behalf of PAGE PERSONNEL and
in which they were asked, in addition to the CV, full body photos, Skype interview,
the conditions of the post were defined for them, which included sporadic relationships, etc.
These job offers, such as the ones that motivate the claim and occurred between March and
June 2018, they also appeared on the internet, in the press and on the social network Facebook
and published in the press.

In some of the messages (the sender addresses are ***EMAIL.1 and ***EMAIL.2),
the person who manages the offers used the name of PAGE PERSONNEL, before
who went to some candidates to denounce the content of the offer. The
entity filed a complaint with the Police and the facts were investigated in a Court of
Madrid. The owner of the IP from which the ads were published was identified,

resident in A Coruña.

- Complaint to the Police and extension of the same is attached.

- Likewise, several emails addressed to job applicants are provided, as well

as the emails that they sent to PAGE PERSONNEL.

SECOND: On 02/07/2020, the Director of the Spanish Protection Agency

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

infringement of article 6.1.a) of the RGPD, and typified as a very serious infringement in the

article 72.1.a) of the aforementioned Law sanctioned in accordance with the provisions of article

83.5.a) of the aforementioned RGPD.

THIRD: Once the initiation agreement has been notified, the claimant in writing dated

02/27/2020 made the following allegations: that the facts imputed to him and

that give rise to this procedure are false, violating their right to honor

personal privacy and own image in accordance with article 18 of the

Constitution; that their right to the presumption of innocence has been violated and

concordant, regulated in article 24.2 of the Constitution; that has not existed

any conduct on your part that results in a breach of the regulations in

matter of data protection or that it is included in its scope of application and that the

agreement is excessive and harmful; requesting the file of the procedure.

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FOURTH: On 06/01/2020 a period of practice tests began,

remembering the following

- Consider reproduced for evidentiary purposes the complaint filed by the

claimant and his documentation, documents obtained and generated by the

Inspection services that are part of the file.

-Assume reproduced for evidentiary purposes, the allegations to the initial agreement filed by the claimant.

FIFTH: On 12/02/2020, a Resolution Proposal was issued in the sense that by

The Director will file the claim for the possible infraction of article 6.1.a) of the

RGPD, typified in article 83.5.a) of the RGPD.

After the term legally indicated at the time of this Resolution

the respondent had not submitted a brief of allegations.

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

accredited the following:

PROVEN FACTS

FIRST. On 04/12/2019 it is received at this Spanish Protection Agency

of Official Data of the Court of Instruction nº 3 of A Coruña giving transfer of the

actions carried out and related to reported facts, preliminary proceedings

abbreviated procedure ***PROCEEDINGS.1, in case it is necessary to instruct procedure

sanction against the defendant.

SECOND. It is stated that the body of origin of the proceedings is the Court of

Instruction No. 22 of Madrid and the original procedure is ***PROCEDURE.1

preliminary proceedings abbreviated procedure, initiation date 09/04/2018.

THIRD. There is a complaint before the National Police Commissioner of the district of

Salamanca-Madrid filed by the lawyer of the Page Personnel company

Selection Spain on 06/01/2018 and that the affected clients are Ms. B.B.B. and Mrs.

C.C.C.; that the email address “***EMAIL.1” and “***EMAIL.2” pretend to be the

company it represents, contacting those affected who are

offers them a job for an amount of money; that those affected are placed in

contact with the merchant by email in order to confirm if the offer was real given that they are offered a liberal job in which predisposition is requested to sexual intercourse and full-body personal photographs are requested; the teller brings to the present the power of clients and conversations with clients. themselves by e-mail.

On 07/20/2018, the company's lawyer filed an extension of the proceedings 10282 of 06/01/2018 denouncing the publication of various offers of work outside the client falsely published with their name; attached copy of the handwritten complaint and copies of emails sent from other accounts: ***EMAIL.3, ***EMAIL.4, ***EMAIL.5, ***EMAIL.6, ***EMAIL.7; web ads and other data to try to locate its author.

There is also a complaint of 09/10/2018 extension of the proceedings 10282 of 06/01/2018 and 07/20/2018 providing more information.

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FOURTH. The emails are provided by the company's lawyer addressed to job applicants, as well as the emails they sent to PAGE PERSONNEL to confirm if the offer was real.

It consists of date 03/01/2018 e-mail received by Ms. B.B.B.:

“From: ***EMAIL.1 March 1, 2018...

Subject: We incorporate Secretary Address:

We incorporate Management Secretary...Experience giving support to senior management.

Proactive person, with a vocation for service, flexible, versatile and liberal.

Hourly availability and to travel. Job offer temporary contract of 6 months

with Page Personnel later than the company...salary between €35,0001 and €42,000

Gross/Annual according to value and involvement...

It also contains the date 05/30/2018 e-mail received by Ms. C.C.C.:

“From ***EMAIL.2

Date: On Wed, 30 May 2018 at 17:14

Subject: We incorporate Secretary Address:

For:

We incorporate Management Secretary...Experience giving support to senior management.

Proactive person, with a vocation for service, flexible, versatile and liberal.

Hourly availability and to travel. Job offer temporary contract of 6 months

with Page Personnel later than the company...salary between €35,0001 and €42,000

Gross/Annual according to value and involvement...

The aforementioned email was sent by its recipient to the company Page Personnel indicating.

I am C.C.C....I know for a fact that it is a fraud, since from this email and others

similar I am receiving daily harassment, but I can not do anything about it and I do not

I can stop it...

(...)

It also provides the existence of other accounts: ***EMAIL.3; ***EMAIL.4 ***EMAIL.5;

***EMAIL.6; ***EMAIL.7 from which the supposed selection process takes place

and that in the case of sent emails, at one point you are required to send

photographs and insist on sending these; when you get in touch with the

candidates is required to have a video conference conversation and that the

language used has sometimes denotes sexist and demeaning content.

In addition to the emails provided, other people have publicly denounced the

made on Facebook and that on the pages of ***URL.1 there are published advertisements of

this same type, providing a copy of them, being their references

***REFERENCE.1, ***REFERENCE.2, ***REFERENCE.3

(...)

We incorporate Management Secretary...Experience giving support to senior management.

Proactive person, with a vocation for service, flexible, versatile and liberal.

Hourly availability and to travel. Job offer temporary contract of 6 months

with Page Personnel later than the company...salary between €35,0001 and €42,000

Gross/Annual according to value and involvement...

(...)

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FIFTH. There are numerous emails received by Ms. D.D.D. in its

email address on 08/27/2018 and 08/28/2018 of content similar to

the above, sent from the email accounts ***EMAIL.3, ***EMAIL.4***

EMAIL.5, ***EMAIL.6, ***EMAIL.7:

From: ***EMAIL.3...

(...)

To: D.D.D.

Sent: Monday, August 27, 2018 7:11 AM

Subject: *** SUBJECT.1: We incorporate Management Secretary...

Hello,

We are writing to you because we INCORPORATE Secretary Management. Secretary of Dhe

seen on page XXXXXXXXX an advertisement of yours and wants to contact you.

(...)

We incorporate Management Secretary...Experience giving support to senior management.

Proactive person, with a vocation for service, flexible, versatile and liberal.

Hourly availability and to travel. Job offer temporary contract of 6 months

with Page Personnel later than the company...salary between €35,0001 and €42,000

Gross/Annual according to value and involvement...

(...)

The recipient sent it to Page Personnel on 08/28/2018, noting that:

This is the first one I receive, they write to me from the portal XXXXXXXXX

SIXTH. There is an email dated 07/23/2018 sent by milanuncios.com to the

Judicial Police of the Salamanca District Commissioner, Madrid, contributing

information of the announcements with reference ***REFERENCE.1, ***REFERENCE.2,

***REFERENCE.3 and ***REFERENCE.4, ***REFERENCE.5, ***REFERENCE.6; the

three last ones contain announcements of job demands; the first three contain

advertisements whose content is identical to that received by those affected:

“WE INCORPORATE Management Secretary...

We incorporate Management Secretary. executive secretary client details

consultant located with solid experience in the market. description of your offer

main responsibilities will be to carry the personal and professional agenda of

address. Coordinate your meetings. take your calls and take your email.

organization of internal events administrative tasks of the position. profile

candidate's experience providing support to senior management. proactive person with

dedication to service, flexible, versatile and liberal. Time availability and to travel.

job offer temporary contract of 6 months with page personnel more after the

company. Hours from 1 a.m. to 5 p.m. from 9 a.m. to 6 p.m. Salary offered between €35,0001 and €42,000

gross/annual according to value and involvement. absolute seriousness and confidentiality with the

nominations.”

E-mail: ***EMAIL.4

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Published: 2018-06-03...

IP: ***IP.1

(...)”

SEVENTH. On 08/30/2018 the National Police Station of the Salamanca district-Madrid addressed an official letter to the Dean of Courts and Instruction requesting court order, noting that once the documentation had been studied and the request to the website ***URL.1 information about the advertisements mentioned in the complaint, they had been provided with the IPs, date and time from where the announcements, belonging to the operator Telefónica de España.

EIGHTH. The Court of Instruction No. 22 of Madrid on 10/11/2018 issued an Order authorizing the issuance of the Judicial Order, official communication resolution on technological measure as well as the dispatch of Order in the form addressed to the telephony operator Telefónica de España, in whose operative part it is indicated that: The issuance of a Judicial Order is AUTHORIZED so that the company Telefónica de España, S.A.U., facilitates the identity of the holders of the IPs listed below from which the connections were made on the days and times indicated:

-***IP.1 at 09:18:20 on 6-3-2018

-***IP.1 at 09:19:22 on 6-3-2018

-***IP.1 at 09:21:27 on 6-3-2018

-***IP.2 at 12:58:42 on 1-24-2018

-***IP.2 at 12:56:35 on 1-24-2018

-***IP.2 at 13:02:07 on 1-24-2018

(...)

NINETH. It is known that the Investigating Court No. 22 of Madrid sent a request for notification to TELEFONICA DE ESPAÑA in relation to the procedure for preliminary proceedings ***PROCEDURES.1 in relation to investigative measures technological limitations of fundamental rights to facilitate the identity of the holders of the IPs that were related and from which the connections on the days and times indicated.

TENTH. It is recorded that on 11/05/2018 TELEFONICA DE ESPAÑA responded to the Court of Instruction No. 22 of Madrid stating that "We acknowledge receipt of your letter of date 10/11/2018 ...and in this regard we inform you that, through the interface established for this purpose, we make available to authorized agents the information obtained in relation to the requested data.

(...)"

ELEVENTH. It consists of Official Letter No. *** OFFICIAL.1 of the Commissioner of the district of Salamanca-Madrid, assigned to the Court of Instruction No. 22 of Madrid and subject: reporting management, which states the following:

"By virtue of your Order issued by your Court on 10/11/2018, in reference to the Preliminary Proceedings ***PROCEDURES.1, to the Telephone Operator of

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Spain to have knowledge of the holder of the Number of IPs detailed in day and hour, he realizes the response of the merchant:

IP number ***IP.1; The three connections are made from the Fixed Terminal with numbering ***TELEPHONE.1, in the name of A.A.A., domiciled at Rua ***ADDRESS.1, A CORUÑA, with DNI ***NIF.1

IP number ***IP.2; That the operator, without this Instruction knowing the reason, submit a listing, 7 pages, with plenty of headlines. That once made a filter with the data obtained from the aforementioned IP, there is a match, Page 2, being the information provided the following; all three connections are made from the Mobile terminal, numbered ***TELÉFONO.2, in the name of A.A.A., domiciled at la Rua ***ADDRESS.1, A CORUÑA, with DNI ***NIF.1

(...)"

TWELFTH. On 11/20/2018 the Court of Instruction No. 22 of Madrid issued an Order ***AUTO.1 noting that by official letter ***NOTICE.1 of the District Commissioner of Salamanca- Madrid realized the result of the entrusted efforts detaching the place from where the connections object of research for the publication of job offers and whose ownership matched the claim.

And that it was clear from the proceedings that the events had occurred in the territorial circumscription of the judicial district of La Coruña, for which the inhibition of the cause in favor of the courts of said district and in its Part Dispositive was indicated in its first point, "The dismissal is left without effect Provisional of these preliminary proceedings agreed in Order of 10-11-2018..."

THIRTEENTH. There is an Order of the Investigating Court No. 3 of A Coruña de date 03/13/2019 in which it is indicated that the proceedings do not appear properly

justified the commission of the crime that has motivated the formation of the cause, without prejudice that the personal data that could have been obtained may be persecuted, decreeing the provisional dismissal and sending testimony to the AEPD.

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.

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Article 58 of the RGPD, Powers, states:

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

corrections listed below:

II

(...)

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;

(...)

The facts denounced are specified in the treatment of the data of

personal character without consent; Specifically, the aforementioned data has been used

for sending emails through which jobs were offered

management secretary with a clearly fraudulent and sexist condition.

The preliminary investigations and actions carried out are related to the offers

sent through e-mails, Facebook and published in ***URL.1. When the

candidates contacted the person who had placed the ad, they were asked for CVs, photos of

full body, Skype interview, etc. The events, which occurred between January and June

2018, they also appeared in the press.

In some of the messages (the sender addresses are ***EMAIL.1 and

***EMAIL.2), the person managing the offers used the name of the company

PAGE PERSONNEL SELECCION ESPAÑA, S.A., to which some of the

the candidates of said offers to denounce their sexist content, which

that motivated the representative of the company to file a complaint with the Police and the

facts were investigated in Court of Instruction No. 22 of Madrid, who

later it would be inhibited in favor of the Investigating Court No. 3 of A Coruña.

The RGPD in its article 5, Principles related to data processing

personal, states that:

"1. The personal data will be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those purposes; according to article 89,

paragraph 1, the further processing of personal data for archiving purposes in

public interest, scientific and historical research purposes or statistical purposes are not

deemed incompatible with the original purposes ("purpose limitation");

(...)

Article 6, Legality of the treatment, of the RGPD that establishes that:

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

conditions:

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a) the interested party gave their consent for the processing of their data

personal for one or more specific purposes;

(...)"

Article 4 of the GDPR, Definitions, in section 11, states that:

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

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

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

concern him".

Also article 6, Treatment based on the consent of the affected party,

of the new Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights (hereinafter LOPDGDD), indicates

that:

"1. In accordance with the provisions of article 4.11 of the Regulation (EU)

2016/679, consent of the affected party is understood to be any manifestation of will

free, specific, informed and unequivocal by which he accepts, either through a

declaration or a clear affirmative action, the treatment of personal data that

concern.

2. When the data processing is intended to be based on consent

of the affected party for a plurality of purposes, it will be necessary to state

specific and unequivocal that said consent is granted for all of them.

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

Respect for the principle of legality of the data requires that it be accredited that the owner of the same consented to the treatment and display reasonable diligence essential to accredit this extreme, since not acting in this way the result would be empty the content of the principle of legality.

III

In the present case, as stated in the antecedents and first proven fact, the claim filed is due to the fact that several people with whom the company PAGE PERSONNEL had contact they warned him that they had received emails emails from different accounts in which he was informed of job offers allegedly carried out on behalf of the aforementioned company and in which they were asked in addition to the CV, full body photos, Skype interview, sporadic relationships, etc. These offers made between March and June 2018, also appeared through advertisements on the internet, specifically on the page ***URL.1, on the social network Facebook and published in different press media.

The messages sent by the person(s) who managed these offers used the name of the company PAGE PERSONNEL, to whom they addressed some candidates to denounce their content, a fact that would motivate the complaint before the Police being investigated the facts before the Court of Instruction No. 22 of Madrid, initiating preliminary proceedings, which would enable the identification of the holder of the IP from which the ads were published on the page web ***URL.1, resident in A Coruña.

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Likewise, it is proven that the company's lawyer, whose name was fraudulently used in the emails sent to the recipients, presented complaint at the Salamanca-Madrid district police station, who in turn addressed an official letter to the Dean of Courts and Instruction requesting an order to Telefónica, pointing out that in light of the documentation provided and once requested information from the managers of the website ***URL.1 about the published announcements and that had been provided along with the complaint by the lawyer of the company, included the IPs, date and time, from where they originated the announcements, belonging to the operator Telefónica de España.

The claimant in extensions of the primary complaint was contributing information on the existence of other accounts from which the supposed selection process and that, as in the case of the emails sent, in a certain moment the bidders were required to send photographs, it is insisted in the sending of these, when it is possible to contact the candidates, it is required have a video conference conversation and that the language used has sometimes denotes sexist and demeaning content.

Information was also provided on the existence of the advertisements published on the XXXXXXX website with content identical to that received by those affected with references ***REFERENCE.1, ***REFERENCE.2, ***REFERENCE.3 as well as of others although not offering but demanding employment of content equally fraudulent together with the corresponding references and that were used by the judicial police to request from the administrators of the aforementioned website the information

conducting timely investigations to clarify the facts.

From the Court of Instruction No. 22 of Madrid, an Order was issued so that proceedings will be initiated and a Command will be dispatched in the form addressed to the operator of telephony service provider on the internet in order to track and facilitate the identity of the holders of the IPs that were related and from which the the connections and who made the information available to the authorized agents obtained.

Well, despite what was stated by the respondent in his writ of allegations it is clear that in relation to the IP number IP.1, that the connections existing ones were made from the fixed terminal with numbering ***TELÉFONO.1, to name of the person claimed, domiciled at Rua ***ADDRESS.1, A CORUÑA, with DNI

And as for the IP ***IP.2 that the connections are made from the terminal mobile, with numbering ***TELEPHONE.2, in the name of the claimed domiciled in the Rua ***ADDRESS.1, A CORUÑA, with DNI...

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The administrators of the web in mail addressed to the Judicial Police of the Commissioner of the district of Salamanca pointed out that "in XXXXXXXX it is not necessary register to post an ad. It is enough to indicate an email to post an ad. In addition, we do not verify the data entered by the advertisers: we are simply a bulletin board and therefore we do not mediate.

In this sense, all the information we have revolves around the

own ads. Below we provide the required data. the indicated time

It is peninsular Spanish”.

It should be noted that although the advertisements provided by XXXXXXXX coincide

with those received by each of the aforementioned persons, such as

stated in the proven facts, it is also true that the e-mail address that appears

in them, ***EMAIL.8 and ***EMAIL.9, does not coincide with those from which

emails were sent to those affected.

Therefore, although it is possible to establish in light of the documentation provided

in the file the existing link between the advertisements posted in the aforementioned

web page, ***URL.1 with the IP and terminal of the claimed party, it is also true that in

relation to the emails provided by the legal representation at the Police Station

sent to those affected related to the company, Ms. B.B.B., Ms. C.C.C. Y

Ms. D.D.D. from the email accounts that respond to the name of ***EMAIL.1”,

“***EMAIL.2”,

“***EMAIL.6”,

***EMAIL.7 it has not been possible to prove the processing of the data of those affected

materialized in the use of their email addresses to send them

e-mails offering clearly fraudulent management secretary positions and using

sexist and denigrating language by not determining the ownership of the email accounts

from which they were sent or their relationship with the claimed party, therefore

there is a lack of evidence necessary to attribute the violation of the

data protection regulations for illicitly carried out treatments.

“***EMAIL.5” and

“***EMAIL.3”,

“***EMAIL.4”,

Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE D. A.A.A., with NIF ***NIF.1, for an alleged violation of the article 6.1 of the RGPD, typified in article 83.5.a) of the RGPD.

SECOND: NOTIFY this resolution to D. A.A.A., with NIF ***NIF.1.

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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