

Procedure No.: PS/00054/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before CIBES

LIFT IBERICA, S.L., by virtue of a claim filed by A.A.A. (hereinafter, the claimant) and based on the following:

### BACKGROUND

FIRST: A.A.A. On July 17, 2018, he filed a claim with the Agency

Spanish Data Protection. The claim is directed against CIBES LIFT IBERICA,

SL with NIF B87216925 (hereinafter, the claimed) because the image of the claimant

continues as of the date of the complaint, linked to the web pages of the aforementioned company, as well as in the main web search engines, despite the fact that he no longer works at CIBES LIFT

IBERICA, S.L. since two years ago.

SECOND: In view of the facts denounced in the claim, the Subdirectorate

General Data Inspection proceeded to carry out preliminary actions of

investigation to clarify the facts in question, in accordance with the

established in Regulation (EU) 2016/679 (General Regulation for the Protection of Data, hereinafter RGPD).

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

the data controller is the claimed party.

THIRD: On February 13, 2019, the Director of the Spanish Agency for

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

infringement of article 5.1. d) of the RGPD, in relation to article 5 of the LOPDGDD;

typified in art. 83.5 section a) of the RGPD and qualified as very serious in art. 72.1.a) of the LOPDGDD.

FOURTH: On February 27, 2019, CIBES LIFT IBERICA, S.L., makes allegations to the

initiation agreement stating the following:

CIBES reviewed its electronic media, its web pages and its internal newsletters and removed any reference that might exist to the claimant's image, so his image is no longer stored on the CIBES website or on any of the its computer records or accessible by any means controlled by CIBES, for which it has been completely suppressed and is no longer linked to the CIBES web pages.

The removal of the claimant's image from the CIBES systems was communicated to the AEPD in the letter sent by CIBES on November 13, 2018, specifically in its Third section, which reports:

“Once the appearance of said image was known, CIBES proceeded to review its internal bulletins and eliminated any reference that might exist to the mentioned image. To date there is no image of the claimant on which CIBES has control over its publication.”

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2/4

The communication sent to the AEPD on November 13, 2018 and the delivery certification issued by the Royal Mint – National Factory of Moneda y Timbre accrediting the suppression work that CIBES carried out in an that although the image of the claimant appears as a result of the search engines Internet search when entering search requests with terms such as “CIBES LIFT IBERICA”, the web address to which this page redirects does not host the image controversial.

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

Data in this procedure are considered proven facts the following,

#### PROVEN FACTS

FIRST: On July 17, 2018, the claimant's image continued to be linked to the web pages of the aforementioned company, as well as in the main search engines of the network, despite because he no longer worked at CIBES LIFT IBERICA, S.L. since two years ago.

SECOND: CIBES reviewed its electronic media, its web pages and its bulletins and removed any reference that might exist to the image of the claimant, for so your image is no longer stored on the CIBES website or in none of your computer records or accessible by any means controlled by CIBES, so it has been completely suppressed and is no longer linked to the CIBES web pages.

#### FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to what is established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in what hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

Furthermore, art. 5.1 d) of the RGPD establishes that personal data will be "accurate and, if necessary, updated; all reasonable steps will be taken to have inaccurate personal data deleted or rectified without delay with respect to the purposes for which they are processed ("accuracy")."

### III

By virtue of the provisions of article 58.2 RGD, the Spanish Agency for Data Protection, as a control authority, has a set of powers corrective measures, among which is the power to impose fines, in the event that there is an infringement of the provisions of the RGD.

Article 58 section 2 GDPR provides the following:

“Each supervisory authority shall have all of the following corrective powers listed below:

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3/4

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

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a certain way and within a specified period.

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;

In the present case, it is taken into account that by virtue of the principle of accuracy, the personal data must be up to date and all reasonable measures will be taken to have inaccurate personal data deleted or rectified without delay with respect to the purposes for which they are processed.

In this specific case, it has been accredited by virtue of the documents provided

with his allegations to the initial agreement that the respondent has adopted a series of adequate measures to guarantee the accuracy and quality of the data that appear in the website of CIBES LIFT IBERICA, S.L.

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: NOTICE CIBES LIFT IBERICA, S.L., with NIF B87216925, for a infringement of article 5.1 d) of the RGPD typified in article 83.5.a) of the RGPD and considered very serious in article 72.1.a) of the LOPDGDD.

SECOND: NOTIFY this resolution to CIBES LIFT IBERICA, S.L. and, according to article 77.2 of the RGPD, INFORM the claimant about the result of the claim.

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. 114.1 c) of the LPACAP, and in accordance with the provisions of article 123 of the LPACAP,

Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of one month from the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

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 two months from the day following the notification of this act,

according to the provisions of 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 decision may be provisionally suspended in administrative proceedings if the interested party

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4/4

states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to

the Spanish Agency for Data Protection, presenting it through the Registry

Electronic 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 1

october. You must also transfer to the Agency the documentation that accredits the

effective filing of the contentious-administrative appeal. If the Agency did not have

knowledge of the filing of the contentious-administrative appeal within two

months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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