

□ Procedure No.: PS/00363/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated May 10, 2019

filed a claim with the Spanish Data Protection Agency. The

The claim is directed against the MUNICIPAL GROUP OF THE POPULAR PARTY IN FOZ,

with NIF P2701900I (hereinafter, the claimed).

The reasons on which the claim is based are that the \*\*\*PUESTO.1 of the town of

Foz (Lugo), belonging to the Popular Party, has published on his social network profile

Facebook a document belonging to an administrative procedure where

appear the personal data of the claimant (name, DNI and family address), which

is interested in it as it is the one who represents the Socialist Association PSdeG-

PSOE in the process.

The administrative procedure had its origin in a request to connect to the network

of supply of the property where the headquarters of the group is located

Socialist, initiated by the claimant as organization secretary, and led to a

claim from the City Council for a debt in respect of a purification fee,

sewer and garbage. The socialist group filed an appeal for reconsideration, it was

dismissed by the City Council, and was still on the date of the claim within the term

to appeal through the contentious-administrative route.

Along with the claim, provide the following documentation:

Screenshots of the profile of \*\*\*PUESTO.1, B.B.B., of the publication in which

attached the resolution where the personal data of the claimant appears, and

also of the resolution itself, highlighting said data in yellow.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, the Subdirector General for Inspection of Data 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).

The aim is to inform the respondent of this claim on July 2, 2019, requiring you to submit to this Agency, within a period of one month, information on the response given to the claimant for the facts denounced, as well as the causes that have motivated the incidence and the measures adopted for its correction of

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in accordance with article 5.1 f) of Regulation (EU) 2016/679 of the Parliament European and Council of April 27, 2016 (RGPD).

The respondent responds that the claimant's data is not published as a person in a private capacity, but merely for identification purposes in its capacity as representative of the PSOE of Galicia in said City Council, with which said data are outside the specific protection provided by the RGPD and the LOPDGDD, as they are "data conceptualized as professional data of the natural person".

In addition, the published information includes public information of general interest for all citizens of the municipality, with the purpose of contributing to the formation of an opinion of the citizens in relation to the works and debts that are the object of said administrative file.

The resolution also does not determine that the address indicated associated with the claimant is his relative, but is designated as domicile for the purposes of of notifications of the socialist group for the purposes of the file.

THIRD: On December 20, 2019, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the GDPR.

TO: Once notified of the aforementioned initiation agreement, the respondent submitted a written QUAR

allegations in which, in summary, it stated that the initiation of this sanctioning procedure lacks legal basis since the Popular Party of Foz has your own Facebook page that has nothing to do with the personal pages of your affiliates or members and the facts denounced refer to the publication of a document in the personal profile of one of the members of the Municipal Party Group People of Foz.

However, it indicates that the debts of the Group of the Socialist Party of Galicia in Foz, constitutes a political and public controversy, since it has been the subject of discussion and publication in various media, including social networks.

It also considers that political parties are a source of political opinion and as such have channels for communication and exercise of their right to freedom of expression and opinion provided for in article 20 of the Spanish Constitution and that their behavior is in accordance with the provisions of article 19 of the LOPDGDD, in accordance with the article

6.1 f) of the RGPD

WHO

TO: On February 12, 2020, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigation actions, E/06151/2019, as well as the documents provided for the claimed.

SEX

TO: On February 13, 2020, a resolution proposal was formulated, proposing that the MUNICIPAL GROUP OF THE POPULAR PARTY IN FOZ, for an infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, with a sanction of warning.

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Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: The \*\*\*PUESTO.1 of the town of Foz (Lugo), belonging to the Party Popular, has posted on its Facebook social network profile a document belonging to an administrative procedure where the personal data of the claimant appears (name, DNI and family address), which is interested in it as it is the one who represents the PS Socialist Group of G-PSOE in the process.

The administrative procedure had its origin in a request to connect to the network of supply of the property where the headquarters of the socialist group is located,

initiated by the claimant as organization secretary, and led to a claim of the City Council of a debt in concept of purification rate, sewerage and trash. The socialist group filed an appeal for reconsideration, it was dismissed by the City Council, and the date of the claim was still within the deadline to appeal via contentious-administrative.

SECOND: The respondent responds that the claimant's data is not published as natural person in a private capacity, but merely for identification purposes in their capacity as representative of the PSOE of Galicia in said City Council, with which these data are outside the specific protection provided by the RGPD and the LOPDGDD, being "data conceptualized as professional data of the natural person".

In addition, the published information includes public information of general interest to all citizens of the municipality, with the purpose of contributing to the formation of a opinion of the citizens in relation to the works and debts that are the object of said Administrative file.

## 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 articles 47 and 48 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

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

For its part, article 5 of the RGPD establishes that 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, section 1, further processing of personal data for archiving purposes in the interest

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public, scientific and historical research purposes or statistical purposes shall not be considered incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken reasonable for the erasure or rectification without delay of the personal data that is inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties during no longer than is necessary for the purposes of processing the personal data; the personal data may be kept for longer periods as long as they are processed exclusively for archival purposes in the public interest, scientific research purposes or historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to the application of the appropriate technical and organizational measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term of conservation");

f) processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against their accidental loss, destruction or damage, through the application of technical measures or

appropriate organizational measures ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions

in section 1 and able to demonstrate it ("proactive responsibility")."

For its part, article 13 of the RGPD, a precept that determines the

information that must be provided to the interested party at the time of collecting their

data, has:

"1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the treatment to which the personal data is destined and the basis legal treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;

e) the recipients or categories of recipients of the personal data, in your case;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the

Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

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2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

- a) the period during which the personal data will be kept or, when not possible, the criteria used to determine this period;
- b) the existence of the right to request from the data controller access to the personal data related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;
- c) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;
- d) the right to file a claim with a supervisory authority;
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;
- f) the existence of automated decisions, including profiling, to referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.



3. When the person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said further treatment, information for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in to the extent that the interested party already has the information.

### III

It has been found that despite the respondent stating so, it is not mentioned in the resolution or document published on the claimant's social profile on Facebook, that the domicile indicated is the one given for the purposes of notifications, in the claim filed for a debt for treatment, sewage and garbage fees.

However, although it is verified that it has been withdrawn, from the profile of the \*\*\* POSITION.1 de Foz, the document that is the subject of conflict in this proceeding, have not been adopted measures not to publish personal information in the future, for this reason it is understood that the claimed is violating article 5.1 f) of the RGPD, which governs the principles of integrity and confidentiality of personal data, as well as the proactive responsibility of the data controller to demonstrate compliance.

### IV

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Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

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;

The art. 83.5 of the RGPD establishes that infractions that affect:

“a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

b) the rights of the interested parties pursuant to articles 12 to 22.”

v

The LOPDGDD in its article 77, Regime applicable to certain categories

responsible or in charge of the treatment, establishes the following:

"1. The regime established in this article will be applicable to treatments

of which they are responsible or entrusted:

a) The constitutional bodies or those with constitutional relevance and the

institutions of the autonomous communities analogous to them.

b) The jurisdictional bodies.

c) The General Administration of the State, the Administrations of the

autonomous communities and the entities that make up the Local Administration.

d) Public bodies and public law entities linked or

dependent on the Public Administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

g) Public law corporations when the purposes of the treatment

related to the exercise of powers of public law.

h) Public sector foundations.

i) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Assemblies

Autonomous Legislative, as well as the political groups of the Corporations

Local.

2. When the managers or managers listed in section 1

committed any of the offenses referred to in articles 72 to 74 of

this organic law, the data protection authority that is competent will dictate

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resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the behavior or correct it.

the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the

body on which it reports hierarchically, where appropriate, and those affected who have

the condition of interested party, if any.

3. Without prejudice to what is established in the previous section, the

data protection will also propose the initiation of disciplinary actions

when there is sufficient evidence to do so. In this case, the procedure and

sanctions to apply will be those established in the legislation on disciplinary regime

or sanction that results from application.

Likewise, when the infractions are attributable to authorities and managers, and the existence of technical reports or recommendations for treatment is proven that had not been duly attended to, in the resolution imposing the

The sanction will include a reprimand with the name of the responsible position and will order the publication in the Official State or Autonomous Gazette that correspond.

4. The data protection authority must be informed of the resolutions that fall in relation to the measures and actions referred to the previous sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions analogous of the autonomous communities the actions carried out and the resolutions issued under this article.

6. When the competent authority is the Spanish Agency for the Protection of Data, it will publish on its website with due separation the resolutions referred to the entities of section 1 of this article, with express indication of the identity of the person in charge or in charge of the treatment that would have committed the infringement.

When the competence corresponds to a regional protection authority of data will be, in terms of the publicity of these resolutions, to what is available its specific regulations.

SAW

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) establishes that each supervisory authority may “order the responsible or in charge of the treatment that the treatment operations are comply with the provisions of this Regulation, where appropriate, in a

certain manner and within a specified period...". The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

Therefore, in accordance with the above, the Director of the Spanish Agency for Data Protection RESOLVES:

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FIRST: IMPOSE the MUNICIPAL GROUP OF THE POPULAR PARTY IN FOZ, with NIF P2701900I, for an infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

SECOND: TO REQUIRE the claimed party so that within one month they certify before this body the fulfillment of:

-The adoption of all necessary measures so that the denounced entity acts in accordance with accordance with the principles of "purpose limitation" and "integrity and confidentiality» of art. 5.1 b) and f) of GDPR respectively.

-The adoption of the necessary measures to update its "Privacy Policy" to the current regulations on the protection of personal data, -Regulation (EU) 2016/679 (RGPD)-, adapting the information offered to the requirements contemplated in article 13 of the RGPD, and must provide users, prior to the collection of their personal data, all the information required in the aforementioned precept, for which the provisions of article 6 of the RGPD must be taken into account in relation to the legality of the treatment.

THIRD: NOTIFY this resolution to the MUNICIPAL GROUP OF THE PARTY

POPULAR IN FOZ, with NIF P2701900I

#### FOURTH

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman,

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 (article 48.2 of the

LOPD), and in accordance with the provisions of articles 112 and 123 of Law 39/2015,

of October 1, of the Common Administrative Procedure of the Administrations

Public, the 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

from the day following the notification of this resolution, or, directly appeal

contentious-administrative before the Contentious-administrative Chamber of the High Court

National, in accordance with the provisions of article 25 and section 5 of the provision

additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction

Contentious-Administrative, within a period of two months from the day following the

notification of this act, as provided in article 46.1 of the aforementioned legal text.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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