

□ Procedure No.: PS/00058/2020

938-300320

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) dated November 13,
2019 filed a claim with the Spanish Data Protection Agency. The
claim is directed against Caja Rural San José de Nules S. Credit Cooperative
of the Valencian Community with NIF F12013140 (hereinafter, Caja Rural).
The reasons on which the claim is based are that the Caja Rural owns
from a bar located on the ground floor of the offices where your address is located
social, it is a public establishment that is a meeting point for deep-rooted custom
in nulls.

He states that in the dining room of said bar the Caja Rural has installed a
bulletin board, on which a list of partners referred to in said
announcement (in total 76) the personal data of the claimant appear clearly
identifiable, with their surnames and names (in alphabetical order), (...).

He adds that with said publication his personal data has been transferred,
such that any Nules resident has identified him as one of those expelled
for having breached economic obligations with the Caja Rural.

Thus, Caja Rural, in addition to transferring its data to anyone
personal have publicly reported their economic situation.

In addition, it states that said announcement has been published at least since
last October 25, although the Governing Council adopted said Agreement on the 21

October 2019.

Together with the claim, the claimant also provides a photograph of the notice board of the Caja Rural, a copy of the requirements directed by a part to the Governing Council on November 4 and 5, 2019 and on the other on November 6, November 2019 addressed to the Data Protection Delegate to withdraw the ad.

SECOND: In accordance with article 65.4 of the LOPGDD, which has provided for a mechanism prior to the admission to processing of the claims that are formulated before the AEPD, consisting of transferring them to the Data Protection Delegates designated by those responsible or in charge of the treatment, for the purposes foreseen in article 37 of the aforementioned rule, or to these when they were not designated, it was given www.aepd.es

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transfer of the claim to the claimed entity so that it proceeded to its analysis and respond to the complaining party and to this Agency within a month.

As a result of this procedure, dated February 11, 2020, Caja Rural states that the Council itself agreed to carry out the notification of its agreement by means of an edict on the bulletin board of the Entity's registered office, in execution of which, on October 21, 2019, with notarial intervention to attest of what was done, the Entity published its decision by means of an edict on said board, which is that of your social center located at your registered office.

In addition to having been the means of notification specifically agreed by the Council in this case for the publication of your agreement, the bulletin board of the

social center is the means that the members of the Entity have provided themselves with to the publication of any news and information of your interest and is, therefore, known by all of them and always used for this purpose.

Once the 15-day hearing period required by the Articles 17.2 of the Statutes and 22.5 of the Decree, the Entity proceeded to withdraw the announcement on November 5, 2019.

As for the place where the notice board is located, it is the center of the Entity, intended for its partners, as reported on the poster located at your entry and in your own rules of use and enjoyment.

The claimant addressed the Governing Council of the Entity, through writings of dated 11/4 and 5/2019, to the DPD, by email dated 11/6/2019.

In response to said writings and email, on 11/22/2019 the Entity hand-delivered to the person authorized by the claimant the answer to your claim.

And, provide the following documentation:

Statutes of the Caja Rural.

Minutes of the meeting of the Governing Council and notarial certificate attesting to the proceedings.

Photo of the entrance sign to the social center.

Copy of the poster of the rules of use and enjoyment of said premises.

Copy of the regulatory contract for the cafeteria service.

Reply to the claimant.

On February 19, 2020, the Director of the Spanish Agency for the Protection of Data, agrees to accept this claim for processing.

THIRD: On March 11, 2020, the Director of the Spanish Agency for Data Protection, agreed to initiate a sanctioning procedure against Caja Rural, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter

LPACAP), for the alleged infringement of article 5.1f) of the RGPD in relation to the article 5 of the LOPDGDD, typified in article 83.5 a) of the RGPD.

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FOURTH: Once the aforementioned initial agreement had been notified, Caja Rural presented a written allegations in which, in summary, it states that it is a credit cooperative, that, In its own registered office, it has a social center at the exclusive disposal of its partners.

It adds that the notice board used by Caja Rural for the purpose of informing and notify your partners you are in your social center, not a bar.

Likewise, it indicates that the agreements adopted by the Governing Board of Caja Rural have complied, in any case, with the provisions of the regulations and statutory provisions that apply to it as a credit cooperative.

Lastly, it indicates that Caja Rural's action has in no case been negligent, but diligent, compliant and careful in the best interest of their own sanctioned and its other partners.

FIFTH: On July 9, 2020, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigation actions, E/00091/2020, as well as the documents provided by Caja Rural.

SIXTH: On September 8, 2020, a resolution proposal is formulated in the following terms:

That the Director of the Spanish Data Protection Agency sanction to Caja Rural San José de Nules S. Coop. of Credit of the Valencian Community, with NIF F12013140, for an infringement of Article 5.1.f) of the RGPD, typified in the article 83.5 of the RGPD, a fine of 5,000 euros (five thousand euros).

The proposed resolution was notified electronically to the respondent, being the date of making available on September 18, 2020 and the date of acceptance the same day.

SEVENTH: On October 2, 2020 they have access to the electronic headquarters of this Agency the allegations of the respondent to the proposed resolution in which requests that the proceeding be archived for having acted, he says, according to Law.

In defense of her claim, the respondent reiterates the allegations to date made to the initial agreement and, in summary, adduces the following arguments: "Caixa Rural de Nules carries out its activity at its registered office, established in Nules, province of Castellón, on calle Mayor nº 66, as provided for in article 6 of its Statutes.

The use and enjoyment of the social center is intended solely and exclusively members of the Caja Rural San José de Nules.

Allow the placement of informative posters of the Entity on the bulletin board. local social announcements.

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The only reality is that it is a private establishment, intended only

and exclusively to partners.

People who become members of Caixa Rural de Nules,

as was the case of the Complainant, are subject to the rights and obligations

foreseen in the Statutes of the Entity.

About the start of the disciplinary proceedings against the Entity's partners, in a

that in accordance with article 17 of the Statutes, the partners will have from the

moment of the communication of the beginning of the sanctioning file, which will be carried out

by publication of an edict on the bulletin board of the registered office of the

Entity, within a period of 15 calendar days for the interested parties to carry out the

corresponding claims.

Accordingly, the Entity published its decision by means of an edict in said

board that is that of your social center located at your registered office, located on the street

Mayor, number 66 in the municipality of Nules, province of Castellón.

The personal data that was included in the Council agreement, including

two of the claimant, were basic data, it contained the name and surnames and only four

NIF numbers, the rest of the numbers were hidden with an asterisk in order to

random.

In our case, in the same way, when publishing the data, we did it in a scope

of exclusive use for our partners and by the way in which we also carry out

other similar publications known to our partners, such as the list of

partners with voting rights, and as contemplated in the additional provision

third of the Statutes.

Caixa Rural has not acted negligently, it has done so following the

legal and statutory procedures to which it is subject as a cooperative of

credit".

Of the actions carried out in this proceeding and of the

documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: On November 13, 2019, the claimant states that Caja Rural is owner of a social center with a cafeteria located on the ground floor of the offices where its registered office is located, is a public establishment that is a point of custom meeting rooted in Nules.

In the dining room of said social center with cafeteria, Caja Rural, has installed a bulletin board, on which a list of partners was published and the data personal information of the claimant clearly identifiable, with their surnames and first name (for alphabetical order), (...).

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With this publication your personal data has been transferred, so that any Nules neighbor has identified him as one of those expelled for having breached economic obligations with Caja Rural.

SECOND: The announcement has been published at least since the 25th of October, although the Governing Board adopted said Agreement on October 21, 2019.

THIRD: It is verified in the photograph of the bulletin board of the Caja Rural, the personal data of the claimant.

FOURTH: The requirements made by the claimant by one party to the Governing Council on November 4 and 5, 2019 and on the other November 6 of 2019 addressed to the Data Protection Delegate to withdraw the ad.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

Caja Rural is accused of committing an infraction for violation of the Article 5.1.f) of the RGPD, which states that:

"1. The personal data will be:

(...)

f) processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of technical measures or appropriate organizational ("integrity and confidentiality").

(...)"

Article 5, Duty of confidentiality, of the new Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in 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 to the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will be maintained even when the relationship of the obligor with the person in charge or in charge of the treatment".

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On the other hand, article 83.5 a) of the RGPD, considers that the infringement of “the basic principles for processing, including conditions for consent in accordance with 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 regulation of infractions in the LOPDGDD is more precise in terms of the situations that give rise to an infraction and its consideration, so that it is much easier to know the limitation period of that infraction (that is, if it is considered mild, serious or very serious) and in view of the administrative sanction to be imposed for its non-compliance.

The LOPDGDD in its article 72, for prescription purposes, states that they are:

“Infringements considered very serious:

1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.

(...)”

III

The documentation in the file offers clear indications that

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

relation to article 5 of the LOPGDD, duty of confidentiality, when considering

proven public display of a document on the bulletin board of the

cafeteria of the local Caja Rural a list of partners (among them is the

claimant), showing their personal data, and therefore it is understood that the entity

claimed violated 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.

It is important to highlight that Caja Rural recognizes that the bulletin board is

always used for this purpose, and that once the term of fifteen days of

hearing, the entity proceeded to withdraw the announcement; and in this sense we must

point out that the hearing process is only for those interested, not for everyone who

stop by the cafeteria and not be affected. This is why it is considered violated.

article 5.1 f) of the RGPD.

The claimant provided a photograph of the Caja Rural bulletin board, where

the data of the claimant is verified, which is perfectly identifiable, where

their surnames and names (in alphabetical order) (...) appear.

The 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.

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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.

Regarding what Caja Rural alleged, it is clear that in this specific case, acted contrary to the principle of confidentiality enshrined in article 5.1.f) of the RGPD, in relation to article 5 of the LOPDGDD, since Caja Rural revealed through the public display of a document on the bulletin board announcements of the claimant's personal data.

IV

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 warning when the processing 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 a certain way and within a specified period;
- 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.

In the present case, it is taken into account that the exposure on the bulletin board Caja Rural advertisements, of a document with personal data can suppose an omission of the duty to adopt or observe the technical measures and organizations that guarantee the security of said data, avoiding its theft loss or improper access; fact that gave rise to the initiation of this proceeding

sanctioning

In this specific case, Caja Rural must prove that it has adopted a series of adequate measures to guarantee the security and confidentiality of the data.

v

In determining the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of this

Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

“Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

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nature, scope or purpose of the processing operation in question

as well as the number of stakeholders affected and the level of damage and damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

- d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that have applied under articles 25 and 32;
- e) any previous infraction committed by the person in charge or the person in charge of the treatment;
- f) the degree of cooperation with the supervisory authority in order to put remedying the breach and mitigating the possible adverse effects of the breach;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular if the person in charge or the person in charge notified the infringement and, in such case, to what extent;
- i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms certificates approved in accordance with article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits realized or losses avoided, direct or indirectly, through infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

“two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatments of personal data.

- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process after the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when it is not mandatory, a delegate for the protection of data.
- h) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any interested."

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SAW

When deciding to impose an administrative fine and its amount, in each case individual will take into account the aggravating and mitigating factors indicated in art. 83.2 of the RGPD, as well as any other that may be applicable to the circumstances of the case.

Consequently, the following have been taken into account as aggravating factors:

- ☐ In the present case we are dealing with unintentional negligent action, but significant
- ☐ Basic personal identifiers are affected, according to the article active (article 83.2 b).

83.2g).

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE CAJA RURAL SAN JOSE DE NULES S COOP. OF CREDIT OF THE VALENCIAN COMMUNITY, with NIF F12013140, for an infringement of the Article 5.1.f) of the RGPD, typified in Article 83.5 of the RGPD, a fine of 5,000 euros (five thousand euros).

SECOND: ORDER CAJA RURAL SAN JOSE DE NULES S COOP. OF CREDIT OF THE VALENCIAN COMMUNITY, that the document with data of personal character object of this procedure; must adopt and observe the measures technical and organizational measures that guarantee the security of the data, avoiding its theft loss or improper access; fact that motivated the beginning of the present penalty procedure; having to inform this Agency within a period of month.

THIRD: NOTIFY this resolution to CAJA RURAL SAN JOSE DE NULES S COOP. OF CREDIT OF THE VALENCIAN COMMUNITY, with NIF F12013140.

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP), within the payment term voluntary established in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of December 17, through its entry, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary payment will be until the 20th day of the following month or immediately after, and if

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is between the 16th and last day of each month, both inclusive, the term of the

payment will be until the 5th of the second following month or immediately after.

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

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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