 Procedure No.: PS/00171/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following

BACKGROUND

FIRST: On 09/04/2019 they are received by the Spanish Agency for the Protection of

Data (AEPD) seven claims against the MINISTRY OF HEALTH OF THE

JUNTA DE CASTILLA Y LEÓN -***MANAGEMENT.1- with NIF S4711001J (hereinafter,

the one claimed) for alleged violation of the data protection regulations of

personal character.

The claimants state in their respective briefs - identical to each other, except in

what concerns your personal data- that on 08/19/2019 the ***MANAGEMENT.1 (in what

successively, the Management) sent "to the corporate mail" of the Area Personnel Board

Department of Health of *** LOCATION.1 a list with the remuneration corresponding to the

concept of variable productivity of the year 2019 in which they appeared, together with the

remuneration for this concept, the data related to names, surnames and categories

professionals. They also indicate that this fact made it easier for the same morning that

the lists were sent were subject to further treatment when distributed to

via WhatsApp. Facts that -the claimants affirm- have “violated their

right to privacy and confidentiality.

SECOND: In view of what is stated in the claims, the AEPD, in order to assess

its admissibility for processing, on 10/28/2019, in the scope of file number

E/09774/2019 and under article 65 of Organic Law 3/2018, of 5

December, Data Protection and Guarantees of digital rights (LOPDGDD),

transferred the claims to the ***MANAGEMENT.2 and the Personnel Board and

requested that, within one month of receipt, they inform of the decision
adopted to put an end to the irregular situation caused, of the measures adopted
to prevent similar events from occurring in the future and to communicate their
decision to the claimants, having to prove before this Agency the receipt of such
communication by recipients. The Management and the Personnel Board received the
letter from the AEPD, respectively, on 10/31/2019 and 11/08/2019, as recorded
accredited in the administrative file.
There is no record in the AEPD that the Personnel Board had responded to
the informative request that was notified to him.
On 11/29/2019, the response from the DPD of ***MANAGEMENT.2 to the request was received.
informative (hereinafter referred to as the DPO). The DPD concludes, regarding “the
Claims related to the referral of the list with the remuneration of the complement
of productivity 2019 of the Management to the Board of Personnel of the Area of Health and
subsequent dissemination through WhatsApp”, that the Management complied with the
obligations imposed by articles 24 and 25 of the RGPD; who has acted

proactive to minimize the risks inherent to its activity and that it has adopted the
measures to prevent similar incidents from occurring in the future.
The DPO's statements are preceded by this explanation: He contacted the
responsible for data protection of "***HOSPITAL.1" and sent him the
claims. The person in charge carried out an investigation of the facts and
interviewed the different "Directions", obtaining the following conclusions:

1.-The Order of 07/08/2019, of the Minister of Health, by which he issues Instructions for the payment of the productivity supplement to the personnel of the Attention areas Specialized; Primary Care and Management of Health Emergencies by the partial evaluation of compliance with the objectives of the 2019 Annual Management Plan, establishes (section 7) that "This Order, as well as the respective Resolutions of the Managers of the Centers assigning the amounts indicated will be of knowledge by the staff of the Center, publishing them in the bulletin board and providing a copy to the union representation" (The underlining is the AEPD)

2.- That, in compliance with said Order and article 23.3.c) of Law 30/1984, of measures for the reform of the Civil Service -referring said precept to the productivity complement, which indicates that "The amounts received by each official for this concept will be public knowledge of the other officials of the interested Department or Public Organization, as well as of the union representatives" - the Management proceeded to send this information to the corresponding Staff Meetings.

3.- That "in no case was the communication made through WhatsApp." Add: "(...) Moreover, in the Management [...] there is a protocol where it is available, and that is how it is known everyone, that instant messaging platforms should not be used to professional communications due to the risk they entail for the protection of privacy". And he says: "The channel used for communications is always a medium. formal and corporate" (emphasis is from the AEPD)

4.- Indicates that "a different issue is that the list where the accessories appear of productivity could have been forwarded through WhatsApp by the receivers of the information, outside the Directorate of Management [...]" It adds that, in order to avoid similar situations in the future, each piece of information sent to the Boards of

Personal, as long as they contain personal data and there is a

duty of secrecy, will be accompanied by a notice in which it will be warned that the information

transferred is subject to strict rules of confidentiality and the regulations of

Personal data protection. It will be stated in the notice that unions

They have a duty of secrecy regarding the information that is communicated to them in a confidential manner.

reserved; that may not be used outside the scope of the former or for purposes other than

of those who motivated its delivery and must be treated in such a way as to guarantee the

security of personal data. It will also indicate that the union becomes

responsible for its non-compliance and the non-compliance with any other rule

regarding confidentiality and secrecy

In accordance with the provisions of article 65 of the LOPDGDD, on 06/02/2020 the

Director of the AEPD signed the agreement for admission to processing of this

claim and in accordance with the provisions of article 65.5 LOPDGDD proceeded to

notify such agreement to the claimants.

THIRD: On 09/21/2020, the Director of the AEPD agreed to initiate

sanctioning procedure to the one claimed for the presumed infraction of article 6.1.a,

in relation to article 5.1.a, of Regulation (EU) 2016/679, of April 27, of the

European Parliament and of the Council, on the protection of natural persons in

regarding the processing of personal data and the free circulation of these

data and by which Directive 95/46/CE (RGPD) is repealed, a violation typified in the

article 83.5.a) of the RGPD.

FOURTH: In compliance with the provision of article 14.2 of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations (LPACAP) the agreement to open the proceeding was notified to the respondent by electronic media.

The certificate issued by the Electronic Notification Service Support service and Authorized Electronic Address of the National Currency and Stamp Factory (in forward, FNMT), which is in the file, proves that the AEPD put the notification available to the recipient on 09/24/2020 and that on 10/05/2020 produced the automatic rejection of the notification.

Article 43.2, second paragraph, of the LPACAP establishes that “When the notification by electronic means is mandatory, or has been expressly chosen by the interested party, it will be understood as rejected when ten days have elapsed natural since the notification is made available without accessing its contents".

In turn, article 41.5 of the LPACAP specifies that "When the interested party or his representative rejects the notification of an administrative action, it shall be recorded in the file, specifying the circumstances of the notification attempt and the medium, considering the procedure completed and following the procedure”.

FIFTH: The respondent did not make any objections to the agreement to initiate the procedure.

Article 64.2.f) of the LPACAP -provision of which the one claimed was reported in the agreement to open the procedure- establishes that if no allegations are made within the term established on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, it may be considered a motion for a resolution.

In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGPD attributed to the

claimed and the sanction that could be imposed. Therefore, taking into account that the respondent has not made allegations to the agreement to initiate the file and in attention to what is established in article 64.2.f LPACAP, the aforementioned initial agreement is considered in this case proposed resolution.

SIXTH: The agreement to initiate the procedure agreed in the third point of the part dispositive “INCORPORATE to the disciplinary file, for the purposes of evidence, the claims submitted by claimants and the information and documentation

obtained by the Subdirectorate General for Data Inspection in the phase of information prior to the agreement of admission to processing of the claim.”

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

The following are considered proven facts in this proceeding:

FACTS

1. The claimants (seven) denounce that on 08/19/2019 Management sent the email of the Board of Personnel of the Health Area a list with the remuneration corresponding to the concept of variable productivity of the year 2019 in which included, together with the remuneration for that concept, the data related to names, surnames and professional categories.

2. The DPD of the respondent has acknowledged that Management proceeded to send the Personnel Boards the amounts assigned to personnel for productivity and has justified the treatment of the data of the management personnel in the compliance with the Order of 07/08/2019, of the Minister of Health, by which he dictates

Instructions for the payment of the productivity supplement to the personnel of the

Specialized Care areas; Primary Care and Emergency Management

Sanitary for the partial evaluation of the fulfillment of the objectives of the Annual Plan of

Management 2019, in connection with article 23.3.c) of Law 30/1984, on security measures

Civil Service reform.

3. The Order of 07/08/2019, of the Minister of Health, in its section 7 established that

“This Order, as well as the respective Resolutions of the Managers of the

Centers assigning the amounts indicated will be known by the

Center staff posting them on the bulletin board and providing

copy to union representation” (emphasis ours)

4. The Fifth section, “Individual allocation”, of the Order of 07/08/2019, of the

Minister of Health, said:

"1. The individual allocation of the amounts that correspond in concept of

productivity to each professional will be carried out by Resolution of the Manager of the Center

correspondent.

2. The Resolutions of the Managers of each of the Centers in which

determine the individual amount of productivity for meeting the objectives of the

Annual Management Plan, will indicate that they are adopted by delegation of the Director of

Health". (emphasis ours)

5. The DPO of the respondent -as stated by the complainants- states that the

communication to the Personnel Board was made by email to its

corporate address.

6. The respondent has made no objections to the opening agreement.

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 the provisions of articles 47 and 48.1 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of the digital rights (LOPDGDD), the Director of the Spanish Agency for the Protection of Data is competent to resolve this procedure.

II

The RGPD deals in article 5 with the principles that must govern the treatment of personal data, provision that provides:

"1. The personal data will be:

a) treated lawfully, loyally and transparently with the interested party (<<lawfulness, loyalty and transparency>>)

(…)

2. The controller will be responsible for compliance with the provisions in section 1 and able to demonstrate it (<<proactive responsibility>>)"

Article 6 of the RGPD, "Legality of the treatment", specifies in section 1 the assumptions in which the processing of third party data is considered lawful:

"1. The treatment will only be lawful if it meets at least one of the following conditions:

a) the interested party gave their consent for the processing of their personal data for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;

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

data controller;

d) the treatment is necessary to protect the vital interests of the interested party or another

Physical person.

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers vested in the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the person in charge of the treatment or by a third party, provided that on said

interests do not override the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data, in particular when the

interested is a child.

The provisions of letter f) of the first paragraph shall not apply to the processing

carried out by public authorities in the exercise of their functions.

two. (…)"

Article 4 of the GDPR, “Definitions”, section 2, offers a legal concept of

“processing”: “any operation or set of operations performed on data

personal or set of personal data, either by automated procedures

or not, such as the collection, registration, organization, structuring, conservation,

adaptation or modification, extraction, consultation, use, communication by

transmission, dissemination or any other form of authorization of access, collation,

interconnection, limitation, suppression or destruction”.

III

1. The person claimed in this sanctioning procedure is attributed an infringement
of article 6.1. of the RGPD because, as has been proven, it carried out a treatment
of the personal data of the professionals who provide service in the Management that
was not covered by any of the conditions of legality that that provision
relates.

In addition, in accordance with article 6.2 of the RGPD, it is the responsibility of the data controller to
burden of proving that the treatment carried out respects the principle of legality and is
incardinated in any of the legal bases provided for in article 6.1 of the RGPD.

The treatment of personal data contrary to the RGPD on which the
The procedure consisted in the Management notifying the Personnel Board of a list
with the list of professionals who provide their services in it - identified by
the name, surnames, NIF and professional category - with the amount of productivity
assigned to each one after the partial evaluation of the fulfillment of the objectives of the Plan
Management Annual 2019.

The infringing conduct on which the agreement to open the procedure dealt did not
did not cover or refer to the subsequent treatment of the data included in the list that,
apparently, they would have spread through WhatsApp. Nor the
claims made were focused on those subsequent treatments nor the
attributed to Management, but limited themselves to explaining that the fact that the
lists had been provided to the Personnel Board led to the information being
spread by third parties through the social network.

The DPO of the claimed party, in his response to the informative request of this Agency,
stated that the data processing carried out by Management - the communication to the
Board of Personnel of the listing with the data of the workers and the productivity
assigned to each employee - had its legal basis, jointly, in the

Article 23.3.c) of Law 30/1984, of August 2, on Measures for the Reform of the

Public Function and in the Order of 07/08/2019, of the Minister of Health, by which

issued Instructions for the payment of the productivity supplement to the staff of

the areas of Specialized Care, Primary Care and Emergency Management

Sanitary for the partial evaluation of the fulfillment of the objectives of the Annual Plan of

Management 2019 (hereinafter referred to as the Order)

The aforementioned Order established in its Fifth and Seventh sections the following:

In the Fifth section, under the heading "Individual Assignment" it said:

"1. The individual allocation of the amounts that correspond in concept of

productivity to each professional will be carried out by Resolution of the Manager of the Center

correspondent.

2. The Resolutions of the Managers of each of the Centers in which

determine the individual amount of productivity for meeting the objectives of the

Annual Management Plan, will indicate that they are adopted by delegation of the Director of

Health". (emphasis ours)

The Seventh section, under the heading "Advertising and participation of the Representation

Union", indicated that "(...) the respective resolutions of the Managers of the

Centers assigning the individual amounts will be known by the

Center staff, publishing them on the bulletin board and providing

copy to union representation" (emphasis ours)

"3. They are rewards

Article 23.3.c) of Law 30/1984 established:

complementary:

(...)

c) The productivity supplement intended to reward the special performance, the

extraordinary activity and the interest or initiative with which the official carries out his

worked.

Its global amount may not exceed a percentage of the total costs of

personnel of each program and of each body that will be determined in the Law of

Budgets. The person responsible for managing each spending program, within the

corresponding budget allocations will determine, in accordance with the

regulations established in the Budget Law, the individual amount that

corresponding, where appropriate, to each official.

In any case, the amounts received by each official for this concept will be

public knowledge of other officials of the Department or Agency

interested party, as well as union representatives." (emphasis ours)

However, Law 7/2007, of April 12, on the Basic Statute of Public Employees

(EBEP), through its unique repeal provision, letter b), repealed article 23 of

Law 30/1984 with the scope determined by the fourth final provision of said Law.

Both regulations of the EBEP -that is, the sole derogatory provision, letter b), and the

fourth final provision - were reproduced without any modification in the Consolidated Text

of the Law of the Basic Statute of the Public Employee, approved by Royal Decree

Legislative 5/2015, of October 30 (TREBEP).

Thus, the TREBEP establishes in the sole repeal provision:

"They are repealed with the scope established in section 2 of the final provision

fourth (...) b) Law 30/1984, of August 2, on Measures for the Reform of the

Public Function, articles (...) 23, (...)".

And the fourth final provision, section 2, of the TREBEP indicates:

“Until the Public Function Laws and the regulatory norms of

development will remain in force in each Public Administration the current regulations

on organization, planning and management of human resources as long as it is not

oppose what is established in this Statute”. (emphasis ours)

2. The TREBEP, like the EBEP did, extends its scope of application (article

2, section 1) to civil servants and, as appropriate, to labor personnel

service, among others, of the Administrations of the Autonomous Communities.

Also, article 2 says:

"3. The teaching staff and the statutory staff of the Health Services will be governed

by the specific legislation issued by the State and by the autonomous communities

within the scope of their respective powers and as provided in this

Statute, except chapter II of title III, except article 20, and articles 22.3, 24

and 84.”

Section 5 of article 2 of the TREBEP adds that "This Statute has

supplementary character for all the personnel of the Public Administrations not included

in its scope."

Consequently, with the exceptions expressly contemplated in article 2.3 of the

TREBEP, the statutory staff is subject to this Law.

From the connection of the sole derogatory provision, section b), of the TREBEP, which

mentions article 23 of Law 30/1984, and of the fourth final provision, section 2,

of the TREBEP, which determines the scope to be granted to the standard derogation mentioned, results in the following:

On the one hand, that the effectiveness of the repeal of article 23 of the Law on Measures for the Reform of the Public Function is postponed to the approval of Function Laws Public and development regulations. On the other hand, that the same final disposition fourth, section 2, of the TREBEP added a subparagraph to that postponed repeal: “as long as do not oppose the provisions of this Statute”.

At this point it is necessary to refer to the Opinion of 01/26/2009 of the Attorney General of the State-Directorate of the State Legal Service, to the Report of the Legal Office of the AEPD 241/2009 that welcomed his proposals and that reflects the criterion that this Agency has maintained since then, as well as the Report of the Legal Office of the AEPD with entry Ref. 212884/2019.

The Opinion 01/26/2009 of the Attorney General of the State -whose conclusions are based on the EBEP regulations that we have cited, repeal and final provisions, which, as has been insistently indicated, are reproduced without changes in the current TREBEP- stressed that, although the game of the single repeal provision, section b), and the fourth final provision, section 3, of the EBEP postponed the repeal of the article 23 of Law 30/1984 until the Public Function Law came into force and regulations of development, "there is a limit to such postponement", that of the incompatibility of the regulation contained in article 23 of Law 30/1984 with the established by the EBEP itself.

The Opinion explains that article 40 of the EBEP, referring to the functions and legitimation of the representative bodies -precept that is identical to article 40 of the TREBEP- unlike its immediate legislative antecedent, article 9 of the Law 9/1987, of June 12, on representative bodies, determination of the working conditions and participation of personnel at the service of the Administrations

Public, did not attribute to the Boards and Personnel Delegates, where appropriate, the

specific consisting of having knowledge of the amount received by each

employee in concept of productivity.

The Opinion issued by the State Legal Service indicates that the comparison of

both precepts -article 40 EBEP and article 9 of Law 9/1987- evidence the

will of the legislator in the EBEP to maintain the functions entrusted to the

union representatives in article 9 of Law 9/1987, except that

inform him of the amounts that each official received for the

productivity concept.

It is clear, explains the Opinion, the incompatibility between article 9 of the Law

9/1987, which came to specify the provision of the last subparagraph of the last paragraph of the

article 23.3.c) of Law 30/1984 and that contained in article 40 of the EBEP, therefore

concludes that the provision of article 23.3.c), last paragraph, last paragraph, of the Law

should be understood repealed by article 40 of the EBEP", notwithstanding that

30/1984 "

subsist the remaining provisions of article 23.3 of Law 30/1984 on

complementary remuneration, given that with respect to the latter it is not contained in

the EBEP no rule that is incompatible with it.

Following the Opinion of the Attorney General of the State, the Legal Cabinet of the

AEPD indicated in its Report 241/2009 -with which it definitively modifies the criterion

until then supported by the AEPD - that the assignment to the trade union representatives

of data referring to individualized perceptions by public employees

in concept of complement of productivity and gratifications was not

covered by article 11.2.a) of Organic Law 15/1999, on Data Protection

(LOPD), being necessary for said transfer of data to take place to have

the consent of those affected.

Therefore, since 2009, it was clearly established by this Agency what was the

correct interpretation of the rules at stake, under which there was no basis

legal for the transfer to the union representatives of the data related to the

individual productivity of public employees being necessary for such

communication have the consent of those affected.

After the entry into force of the RGPD, the conclusion must be, at this point, the same: the

communication to the Personnel Boards or other bodies of trade union representation of

the individual productivity of public employees requires that they attend as a basis

The consent of the owner of the data legitimizes the treatment. we refer

in this sense to the Report of the Legal Office of the AEPD with entry number

212884/2019.

3. Article 6.1. of the RGPD requires for the processing of personal data to be

lawful that any of the legal bases that are listed therein concur.

The defendant has invoked as the basis for the data processing carried out

the joint application of article 23.3.c) of Law 30/1984 and the Order of

07/08/2019, from the Minister of Health.

3.1. Therefore, it seems appropriate to refer, following the Opinion of the Legal Profession General and the Reports of the Legal Office of this Agency, if the treatment of data object of the claim could or could not be covered by the legal basis described in the section c) of article 6.1 of the RGPD: “c) the treatment is necessary for the compliance with a legal obligation applicable to the data controller;”

As stated in the preceding paragraphs, article 23 of Law 30/1984 was repealed by the EBEP, taking into account not only the provision sole repeal, letter b) and the fourth final provision of the aforementioned EBEP, but also as explained in the Opinion of the General Advocacy that we follow, because being the article 9 of Law 9/1987 the specification of the provision contained in the last paragraph of the last paragraph of article 23.3.c of Law 30/1984 -which is the one invoked in this matter by the claimed- must be understood to be repealed by article 40 of the EBEP, any time that this provision maintains the functions that article 9 of Law 9/1987 entrusted to the union representatives, with the exception of putting in their knowledge of the amounts that each official received for the concept of productivity.

Thus, when the events occurred that are the object of assessment in this procedure, there was no rule with the formal rank of enabling law of treatment made by the claimant. The only existing rule was a regulatory provision, the Order of 07/08/2019 of the Minister of Health, which obliged the Managers to notify the Personnel Boards of the productivity lists.

The legal basis of section c) of article 6.1 of the RGPD refers to the existence of “a legal obligation”. And, as the Report of the Legal Office of the AEPD with entry reference 212884/2019, the meaning of the expression "obligation legal” contained in article 6.1.c) of the RGPD is equivalent, in the Spanish regulation of data protection, to an obligation established in a law in the formal sense, to a

standard with the force of law.

It cannot be otherwise in the light of article 53.1 of the Constitution (CE) that provides that the exercise of the rights and freedoms recognized in Chapter second of Title I -among them, therefore, the fundamental right to the protection of personal data contained in article 18.4 of the CE- can only be regulated by law, which must in any case respect its essential content.

It should be added that the AEPD, through the Reports of its Legal Office, has analyzed the possibility of finding legal coverage for identical data processing which is valued here under article 40 of the TREBEP in connection with article 10.3 of Organic Law 11/1985, of August 2, on Freedom of Association (LOLS) The AEPD has concluded that the aforementioned treatment cannot be based on compliance with a legal obligation connected with article 10.3 of the LOLS because "the function of surveillance and protection of working conditions attributed to the Personnel Boards by article 40 of the TREBEP and by article 10.2 of the LOLS, it can be developed without the need to proceed to a massive transfer of the productivity lists of the personnel who provide their services in the corresponding Body or Unit". (The underlining is ours)

Consider this Agency through the reports issued by its Legal Office that, while the Opinion of 01/26/2009 of the Attorney General of the State continues fully in force, in his opinion, "the function of control of the representatives of the workers will be fully satisfied, through the transfer to the Board of

Personal information duly dissociated. Thus, when said

personal information is previously subject to a

dissociation procedure, the provisions of said Regulation will not be applicable

-RGPD- declining its forecasts in relation to the anonymized information object

of treatment". (emphasis ours)

3.2. Section f) of article 6.1. of the RGPD refers to another of the circumstances in

which the legality of the treatment can be founded: that it is "necessary for the

satisfaction of legitimate interests pursued by the data controller or

by a third party, provided that said interests do not prevail the interests or

fundamental rights and freedoms of the interested party that require the protection of

personal data, in particular when the data subject is a child.

The provisions of letter f) of the first paragraph shall not apply to the processing

carried out by public authorities in the exercise of their functions."

Regarding whether it is possible to protect the processing of personal data in this legal basis

made by the claimed party, the following considerations are made: Section f,

of article 6.1 RGPD refers to a treatment that is "necessary" for the

"Satisfaction of legitimate interests" of the data controller or a third party

(for what is of interest here, the Personnel Board) that "prevail" over the interests,

fundamental rights and freedoms of data subjects.

This Agency has considered in the Report of its Legal Office with reference to

entry 212884/2019 that "it is not appreciated that the processing of personal data

whose transfer is intended -contained in the "productivity lists"-, is

necessary for the satisfaction of legitimate interests - ex letter f) of article 6.1. of

RGPD- persecuted by the Personnel Boards, which must prevail over the

interests or the fundamental rights and freedoms of the affected workers,

with respect to which the corresponding legal protection is imposed" (The underlining is

our)

The Report mentioned, clarifies, however, that "it is worth considering the concurrence of legitimate interests so that, individually, the workers of the same Department can access the data related to the productivity complement perceived by the remaining members of the one who finds his shelter in what provided for in article 6.1.f) of the Regulation." And on this particular, he adds that "Such and as indicated in our legal report 137/2010, of April 7, in the assumptions of access of public employees, said access must be facilitated in the so that it may be less detrimental to the rights of the rest of those affected. It leads to conclude as a suitable means the general exposition of the data, avoiding its publication in a network, although it is private and even more so its inclusion in a computer file, even if it could not be manipulated. This would be the formula with which would best guarantee the balance of rights referred to in the Article 6.1 f) of the General Data Protection Regulation." (The underline is our)

3.3. From the foregoing considerations it follows that the claim, through the Management, carried out a treatment of the personal data of the employees, specified in communicating to the Personnel Board a list with the productivity assigned to each one of them, listing in which they were perfectly identified, without being authorized for this treatment.

The only circumstance, of those provided for in article 6.1 of the RGPD, that could have

protected the legality of this treatment was, as previously indicated, the

consent of those affected.

Article 6.1. of the RGPD, regarding the legal bases of the treatment, refers in the

section a) to the "consent of the interested party for the processing of their data

for one or more specific purposes". On the other hand, the GDPR requires that the

consent is express (article 4.11). And it is not stated in the procedure that the

claimed had sought and obtained the consent of each of the

employees to process your data with the specific purpose of communicating them to the Board

of Personnel and inform them of the productivity assigned to each one of them.

Thus, the treatment that the defendant carried out, which is the object of assessment in the

present procedure, violated article 6.1.a, of the RGPD in relation to the article

5.1.a of the GDPR.

The infraction for which the claimed party is held responsible is typified in article

83.5 of the RGPD, a provision that establishes:

"The infractions of the following dispositions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of 20,000,000 Eur or, in the case of

of a company, of an amount equivalent to a maximum of 4% of the volume of

Total annual global business of the previous financial year, opting for the one with the highest

amount:

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

consent under articles 5,6,7 and 9."

For the purposes of determining the limitation period for infractions, the LOPGDD

qualifies as a very serious infringement -article 72.1.b)- "The processing of personal data

without the concurrence of any of the conditions of legality of the treatment established in

Article 6 of Regulation (EU) 2016/679."

IV

The corrective powers that the RGPD attributes to the AEPD as the control authority are

determined in article 58.2, a precept that provides:

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

listed below:

a) sanction any person responsible or in charge of the treatment with a warning

when the planned treatment operations may infringe the provisions of the

this Regulation;

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;

c) order the person in charge or in charge of the treatment to attend to the requests for

exercise of the rights of the interested party under 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;

e) order the data controller to notify the interested party of the violations

of the security of personal data;

f) impose a temporary or definitive limitation of the treatment, including its prohibition;

g) order the rectification or deletion of personal data or the limitation of

treatment under articles 16, 17 and 18 and notification of such measures to

the recipients to whom personal data have been communicated in accordance with the

article 17, paragraph 2, and article 19;

h) withdraw a certification or order the certification body to withdraw a

certification issued in accordance with articles 42 and 43, or order the agency of

certification not to issue a certification if they are not met or are no longer met

the requirements for certification;

i) impose an administrative fine in accordance with article 83, in addition to or instead of the

measures mentioned in this section, according to the circumstances of each case

particular;

j) order the suspension of data flows to a recipient located in a

third country or to an international organization."

In turn, article 83.7 of the RGPD indicates that "Without prejudice to the corrective powers

of the supervisory authorities within the meaning of Article 58(2), each Member State

may establish rules on whether and to what extent fines can be imposed

administrative authorities and public bodies established in that State

member".

In accordance with the authorization that this provision grants to the Member States, the

LOPDGDD has opted, in the event that the authorities or public bodies that

in it are related - among which is included who has in this file

sanctioning the condition of claimed- were responsible for any of the

treatments described in its articles 72 to 74, to adopt the corrective measure of

warning provided for in letter b) of article 58.2. of the RGPD and any other

measures that proceed so that the offender ceases in his conduct or corrects the

effects of the offense committed.

Article 77 of the LOPDGDD, under the heading "Regime applicable to certain

categories of controllers or processors" reads as follows:

"1. The regime established in this article will be applicable to the treatment of

who are responsible or in charge:

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

autonomous communities analogous to them.

b) The jurisdictional bodies.

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

autonomous 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 are

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 Legislative Assemblies

autonomous, as well as the political groups of the Local Corporations.

2. When those responsible or in charge listed in section 1 committed

any of the infractions referred to in articles 72 to 74 of this law

organic,

the competent data protection authority will issue a resolution

sanctioning them with a warning. The resolution will also establish the

measures to be taken to stop the conduct or correct the effects of

the offense that was committed.

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

that depends hierarchically, where appropriate, and to those affected who had the condition

of interested, in his case." (emphasis ours)

Having been accredited in the procedure that the claimed party is responsible

of an infringement of article 6.1.a of the RGPD, typified in article 83.5.a) of the

RPGD, qualified for the purposes of prescription of a very serious infringement in article

72.1.b) of the LOPDGDD, as a corrective measure, in application of what is established in

Articles 83.7 of the RGPD and 77 of the LOPDGDD and in accordance with article

58.2.b RGPD, it is agreed to address a warning.

Therefore, based on the foregoing,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE that the HEALTH DEPARTMENT OF THE BOARD OF

CASTILLA Y LEÓN, with NIF S4711001J, has violated article 6.1 of the

RGPD, infringement that is typified in article 83.5.a) of the RGPD.

SECOND: ADDRESS THE HEALTH MINISTRY OF THE JUNTA DE CASTILLA

AND LEÓN, with NIF S4711001J, a WARNING, in accordance with the provisions of

Articles 58.2.b) and 83.7 of the RGPD and 77 of the LOPDGDD.

THIRD: NOTIFY this resolution to the DEPARTMENT OF HEALTH OF

THE JUNTA OF CASTILLA Y LEÓN.

FOURTH

provided for in article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman, as

FIFTH: 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.

C/ Jorge Juan, 6

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Against this resolution, which puts an end to the administrative procedure, according to article 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 month from counting 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 article 90.3 a) of the LPACAP, The firm resolution may be provisionally suspended in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal. If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [https://sedeagpd.gob.es/sede-electronica-web/], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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