

□ File No.: PS/00428/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the complaining party) dated May 20, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against the GALICIAN HEALTH SERVICE with CIF Q6550006H

(hereinafter, SERGAS). The grounds on which the claim is based are as follows:

The complaining party states that his written complaint for harassment has been provided

against two colleagues from the department of \*\*\* DEPARTMENT.1 of the

Hospital \*\*\*HOSPITAL.1, to the workers involved in it. On 1/28/21 he submitted a

written to the commission of investigation of the harassment complaint, in which he explained the

leaking of the complaint and the violation of the principle of confidentiality that governs the

process. The complaining party states that, in addition, in the written complaint,

contained his ID, address and other information that should not have been provided to the

denounced.

Together with the claim, the complaint for workplace harassment is provided, the letter sent to the

Commission, a written complaint of harassment in which there are some annotations

carried out by the accused, the report containing the conclusions of the

Commission and the Procedure for action in situations of workplace harassment and other

discrimination in the work of the Galician Health Service.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), said claim was transferred to SERGAS, so that

proceed to its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements set forth in the regulations of Data Protection.

There is no record in the file that SERGAS responded to the transfer of the claim.

THIRD: On August 18, 2021, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On 09/27/2021 it is received in this agency, through Management Integrated Registry Services (GEISER), a letter from SERGAS in which it is exposes:

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-That the claimant provides services as XXXXXXXX at the University Hospital

\*\*\*HOSPITAL.1, dependent on SERGAS, by virtue of interim appointment in a vacant position.

-That the complaining party has submitted briefs in which he denounced being a victim of workplace harassment by two other workers who also serve as XXXXXXXX, although on a different shift, so it's been years since they coincided in the working hours.

-That prior consent of the denouncing party and information to all parties involved, the investigation procedure provided for in the Procedure for Action Against Situations of Workplace Harassment and Other Discrimination in the Work (P-PRL-19)

-For this purpose, the investigation commission was appointed, made up of professionals designated by the direction of the Sanitary Area, and the Union Organizations.

-The Commission conducted an investigation of the facts, having conducted interviews to the denouncing and denounced parties, as well as to those responsible for the unit and various witnesses. After the corresponding analysis, it issued a report dated March 1, 2021, considering that there were no harassment behaviors.

-Within the investigation procedure, the people denounced for harassment requested a copy of the documents in the file, and following the established in article 53.1.a) of Law 39/2015 of October 1 on the Procedure Common administrative, the request was granted and a copy of the documents was provided that are in the file to the parties interested in it. Therefore, the delivery of the complaint letter was not a leak.

-Regarding the fact that the complaining party could have had access subsequently to the copies of the aforementioned documents, suggesting an improper custody of the same, Hospital \*\*\*HOSPITAL.1 conducted an internal investigation, consisting of the following:

-The complaining party manifested in other procedures (complaint before the office of the Valedor do Pobo de Galicia) that by the cleaning staff They had delivered a copy of the documents that constituted the complaint in the harassment procedure (that is, those that she herself had delivered and whose copy was provided to the accused parties)

-However, the investigations carried out show different conclusions. There is a statement from the cleaner B.B.B. who states that, providing cleaning work in the afternoon shift in the unit of lingerie, the complaining party addressed her requesting that she allow him access the work area of female workers denounced for harassment. The

cleaner did not prevent access since the complainant was a worker

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of the same unit. He also states that he was able to observe how he accessed the work table and cupboards used by those regularly denounced, where they kept the copies that had been given to them within the harassment procedure.

FIFTH: On February 18, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against SERGAS, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

Once notified of the aforementioned initiation agreement, SERGAS presented a brief of allegations in which, in summary, stated that:

1-Since the AEPD has not addressed the Ministry of Health, they have not had prior record of the procedure.

In this regard, it should be noted that the request for information and transfer of the claim filed in this Agency by the claimant party addressed the SERGAS, to the attention of the controller or its Delegate of Data Protection, through the Electronic Notification Service and Address Electronic Enabled, stating as received on 06/14/2021.

It should also be noted that article 14 of Law 40/2015 on the Legal Regime of the Public Sector establishes in its first section:

"1. The administrative body that is deemed incompetent for the resolution of

a case will refer the proceedings directly to the body it deems

authority, and this circumstance must be notified to the interested parties.”

Therefore, if the recipient of the document sent by the AEPD was not the one indicated to resolve the matter should have referred it to the corresponding body, without this being able to be considered the responsibility of the AEPD, so such an allegation cannot be accepted.

2- SERGAS alleges that in an action procedure in situations of workplace harassment and other discrimination at work, the complaint form collects the documentation agreed by all those responsible for the preparation of said protocol and the rest of the documentation has been the one that the Processing Commission of estimated necessary to collect to process said file. Because of this, the A.S. Lugo provided the documentation in its entirety to the interested parties who had so reclaimed.

In this regard, it should be noted that personal data such as the number of the DNI or address, are not necessary, pertinent or adequate for the exercise of the defense of the workers denounced in the procedure of workplace harassment.

SIXTH: On March 30, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency penalize the GALICIAN HEALTH SERVICE (SERGAS), with CIF Q6550006H, for an infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, with a warning.

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Once the resolution proposal has been notified and the deadline for it has elapsed, there is no evidence that

new allegations have been presented by SERGAS.

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

In this proceeding, the following are considered proven facts:

## FACTS

FIRST: It is accredited that the claimant provides services as

XXXXXXX at the University Hospital \*\*\*HOSPITAL.1, dependent on SERGAS, and

who has submitted briefs in which he denounced being a victim of workplace harassment by

of two other workers who also provide service as XXXXXXX, although in

different turn.

SECOND: It is accredited that the planned investigation procedure was initiated

in the Procedure for Action in Situations of Workplace Harassment and Other

Discrimination at Work (P-PRL-19), and that within the procedure of

investigation, the people denounced for harassment requested a copy of the

documents in the file, and following the provisions of article 53.1.a)

of Law 39/2015 of October 1 of the common Administrative Procedure, it was agreed

as requested and a copy of the documents in the file was provided.

THIRD: It is accredited that SERGAS has disclosed data on

personal character not necessary, pertinent or adequate, such as the number of the

DNI or address, when transferring the complaint for workplace harassment filed by the

claimant party, for the exercise of the defense of the workers denounced in the

workplace harassment procedure.

## FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

Principle of minimization of data processing

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SERGAS is accused of committing an infringement of article 5.1.c) of the RGPD.

Article 5, "Principles related to treatment" of the RGPD establishes:

"1. The personal data will be:

(...)

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

Article 83.5 of the RGPD, under the heading "General conditions for the imposition of administrative fines" provides:

"The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

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

consent under articles 5, 6, 7 and 9; (...)"

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that:

"The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result

contrary to this organic law.

For the purposes of the limitation period, article 72 "Infringements considered very

serious" of the LOPDGDD indicates:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

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. (...)"

From the investigation carried out in this proceeding, it is concluded that the

SERGAS has violated the provisions of article 5.1.c) of the RGPD, by transferring

the complaint filed by the claimant to the workers denounced for harassment

employment, without omitting unnecessary data for your defense, such as ID and address

of the interested

Therefore, the infringement of article 5.1.c) of the RGPD is accredited.

Sanction for the infringement of article 5.1.c) of the RGPD

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Article 83 section 7 of the RGPD, provides the following:

Without prejudice to the corrective powers of the control authorities under of Article 58(2), each Member State may lay down rules on whether can, and to what extent, impose administrative fines on authorities and organizations public authorities established in that Member State.”

Likewise, article 77 “Regime applicable to certain categories of responsible or in charge of the treatment” of the LOPDGDD provides the following:

“1. The regime established in this article will be applicable to the treatment of who are responsible or in charge:

(...)

c) The General Administration of the State, the Administrations of the communities autonomous and the entities that make up the Local Administration.

(...)

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 data protection authority that is competent will dictate 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.

(...)

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

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: IMPOSE the GALICIAN HEALTH SERVICE (SERGAS), with NIF Q6550006H, for an infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the GALICIAN HEALTH SERVICE (SERGAS).

THIRD: COMMUNICATE this resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

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.

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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 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 art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution 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.

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