

Procedure No.: PS/00171/2019

RESOLUTION OF PUNISHMENT PROCEDURE

In the sanctioning procedure PS/00171/2019, instructed by the Spanish Agency for

Protection of Data to the entity GENERAL SECURITY TREASURY

SOCIAL (hereinafter the defendant), in view of the complaint filed by Ms. A.A.A.

(hereinafter the claimant), and based on the following

BACKGROUND

FIRST: The affected party on 05/07/2018 filed a written claim with the

Spanish Data Protection Agency. The claim is directed against the

claimed, for the following reasons: that in the report of his working life appear

the days of leave and the reason why they were taken, reveals the circumstance of

being a victim of gender-based violence.

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

General Data Inspection proceeded to carry out preliminary actions of

investigation to clarify the facts in question, 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, Section

second, of Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights (hereinafter LOPDGDD).

1. After transferring the complaint to the respondent, dated 07/20/2018, it is received in

this Agency, with registration number 186412/2018, written from this

Treasury stating that the claimant had already processed, on the date of

05/07/2018 a complaint in the electronic office of Social Security.

2. The respondent provides writings of the communications maintained with the

claimant as a result of both the complaint presented to that institution, and the claim filed with this Agency. In an email sent on 05/10/2018 the claimant is informed that they will request the department of I develop the appropriate modifications for its rectification.

3. The action in particular involved a request to its Development Center, which proceeded to adapt the legend in the model used by the program computer so that it only included a reference to the regulations Applicable: Article 29.8 of Law 30/1984, of August 2, on Measures for the Civil Service Reform, without providing further details of the cause of the special permanence (in this case the condition of victim of domestic violence) gender). This modification would become effective on 05/28/2018.

4. This Agency made three requests for information with dates 08/14/2018, 01/16/2019 and 02/19/2019, to determine the exact legend that will appear in the work life report in the case of having requested a leave of absence for being a victim of gender-based violence.

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5. On 02/20/2019 the respondent responded to the request for information effected; provided the report on the claimant's working life in which The modification made to the leave data is shown as consequence of article 29.8 of Law 30/1984, of August 2, on Measures of Reform of the Public Function.

THIRD: On 04/24/2019, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged

infringement of article 5 of the RGPD, considering that the sanction that could correspond would be a WARNING.

FOURTH: Once the initiation agreement has been notified, the one claimed at the time of this

The resolution has not presented a written statement of allegations, for which reason the

indicated in article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, which in section f)

establishes that in the event of not making allegations within the period established on the

content of the initiation agreement, it may be considered a proposal for

resolution when it contains a precise statement about the responsibility

imputed, reason why a Resolution is issued.

FIFTH: Of the actions carried out in this proceeding, they have been

accredited the following:

PROVEN FACTS

FIRST: On 05/07/2018 it has entry in the Spanish Agency for the Protection of

Data, written by the affected party in which she claims that the claimed in the report

of their working life, the days of leave and the reason why they were given appear.

took, revealing the circumstance of being a victim of gender-based violence, a circumstance

which may be known by third parties.

SECOND: It is recorded that the claimant had processed and transferred the same

claim/complaint in the electronic headquarters of the claimed party.

THIRD: There is an email dated 05/10/2018 sent by the claimed party to

the claimant indicating that the development department should be asked for the

opportune modifications for its rectification.

The request to the development department led to the adaptation of the legend

in the model used by the computer program so that it only included one

reference to the applicable regulations: article 29.8 of Law 30/1984, of August 2, of

Measures for the Reform of the Civil Service, without providing more details of the cause of the special permanence (in this case the condition of victim of violence of genre). This modification would become effective on 05/28/2018.

FOURTH: The AEPD made three requests for information dated 08/14/2018, 01/16/2019 and 02/19/2019, so that the legend that would appear in the working life report in the case of requesting a leave of absence due to being victim of gender violence.

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FIFTH: It is stated that on 02/20/2019 the respondent provided a copy of the report on the working life of the claimant, including the date of leave of absence as a consequence of article 29.8 of Law 30/1984, of August 2, on Measures to Reform the Public function.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Data Protection Agency is competent to resolve this procedure.

Yo

Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations, in its article 64 "Agreement of initiation in the procedures of a sanctioning nature", provides:

II

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the rules

regulators of the procedure so provide.

2. The initiation agreement must contain at least:

- a) Identification of the person or persons allegedly responsible.
- b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what results of instruction.
- c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the system of recusal of the same.
- d) Competent body for the resolution of the procedure and regulation that attributes such competence, indicating the possibility that the alleged perpetrator can voluntarily acknowledge its responsibility, with the effects provided for in the article 85.
- e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those may adopt during the same in accordance with article 56.
- f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in the event of not making allegations within the stipulated period on the content of the resolution of initiation, it may be considered a resolution proposal when it contains a precise statement about the imputed responsibility.

3. Exceptionally, when at the time of issuing the initiation agreement there are not sufficient elements for the initial qualification of the facts that motivate the initiation of the procedure, the aforementioned qualification may be carried out in a phase later by drawing up a List of Charges, which must be notified to the interested".

In application of the previous precept and taking into account that no formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

The defendant is charged with a violation of article 5, Principles relating to the treatment, of the RGPD that establishes that:

III

"1. The personal data will be:

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

(...)

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

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

3. The obligations established in the previous sections will remain even when the relationship of the obligor with the person in charge or person in charge had ended

of the treatment”.

IV

In the present case, the violation of the duty of confidentiality materializes in the modification itself proposed by the respondent, not considering it appropriate to the include in the Report on working life the data of the leave of absence in accordance with what is stated in article 29.8 of Law 30/1984, of August 2, on Security Measures Public Function Reform. The aforementioned precept establishes: “8. Leave of absence for reason of gender-based violence against female officials”, for which the aforementioned circumstance could be known and revealed by anyone just by going to consult the aforementioned precept.

It should be noted that our regulatory framework contains numerous rules that address the problem of gender violence, especially highlighting the L.O. 1/2004, of December 28, on Comprehensive Protection Measures against Violence against Gender and, although it is true that each one of them presents its own particularities, highlights the interest in including prevention and protection measures, as well as the possibility of adopting precautionary measures in certain cases.

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LO 1/2004, of December 28, on Comprehensive Protection Measures against Gender Violence, in its article 24, Scope of rights, states that:

”The civil servant who is the victim of gender-based violence shall have the right to reduce or to the reorganization of their work time, to the geographical mobility of the center of work and leave of absence in the terms determined in its legislation specific”.

Adding in article 63, Data protection and limitations of the advertising, that:

”1. In the actions and procedures related to the violence of

gender, the privacy of the victims will be protected; in particular, your personal data, those of their descendants and those of any other person who is under their care or custody.

2. The competent Judges may agree, ex officio or at the request of a party, that the hearings take place behind closed doors and that the proceedings are reserved”.

For its part, Royal Legislative Decree 5/2015, of October 30, by which the revised text of the Law on the Basic Statute of Public Employees is approved establishes in its article 49, Permits for reasons of conciliation of personal life, family and work, due to gender violence and for victims of terrorism and his next of kin, in section d) states:

“Permission due to gender-based violence against female officials: the faults of assistance, of the civil servants victims of gender violence, total or partial, will be considered justified by the time and under the conditions in which determined by the social care or health services as appropriate.

Likewise, female officials who are victims of violence against women, in order to effective their protection or their right to comprehensive social assistance, they will have the right to reduction of the working day with a proportional reduction in remuneration, or the reorganization of working time, through the adaptation of the schedule, the application of flexible hours or other forms of working time management that are applicable, in the terms that for these assumptions establishes the plan of equality of application or, failing that, the competent Public Administration in each case.

In the case set forth in the preceding paragraph, the public official will maintain his full remuneration when he reduces his working day by a third or less.”.

Adding in its article 82, Mobility for reasons of gender violence and for

reason for terrorist violence, section 1 states:

"1. Women victims of gender violence who are forced to

leave the job in the locality where they had been providing their services,

to make effective their protection or the right to comprehensive social assistance, they will have

Right to transfer to another job of your body, scale or category

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professional, with similar characteristics, without the need for it to be vacant

necessary coverage. Even so, in such cases the Public Administration

competent, will be obliged to inform you of the vacancies located in the same

locality or in the localities that the interested party expressly requests.

This transfer will be considered a forced transfer.

In actions and procedures related to gender violence,

The privacy of the victims will be protected, especially their personal data, those of their

descendants and those of any person who is in their care or custody.

From the point of view of data protection regulations, the repealed

LOPD established the necessary precautions to guarantee that access to information

be carried out by the professional who should act in each case in such a way that

produced improper communications to third parties, causing the violation of the duty

of secrecy to which all those who intervened in a

processing of personal data in accordance with the provisions of article

10 of the aforementioned Organic Law.

In addition, the acting Administration should be responsible for adopting the

technical and organizational measures necessary to guarantee the security

of personal data and avoid its alteration, loss, treatment or access

unauthorized, taking into account the state of technology, the nature of the data

stored and the risks to which they were exposed, in accordance with the provisions of

Article 9 of the LOPD.

Also the Regulation of development of the Organic Law 15/1999, of 13 of

December, on the protection of personal data, today repealed, I already pointed out

that (high level security measures):

"3. In addition to the basic and medium level measures, the high level measures

They will be applied in the following files or processing of personal data:

a) Those that refer to data on ideology, union affiliation, religion,

beliefs, racial origin, health or sex life.

b) Those that contain or refer to data collected for police purposes without

consent of the affected persons.

c) Those that contain data derived from acts of gender violence."

On 05/25/2018, Regulation (EU) 2016/679 of the Parliament came into force

European and Council, of April 27, 2016, on the protection of people

regarding the processing of personal data and the free circulation of

these data, which came to repeal the previous regulations on this matter.

Article 9, Treatment of special categories of personal data, of the

GDPR states that:

"1. The processing of personal data that reveals the origin

racial or ethnic origin, political opinions, religious or philosophical convictions, or

union affiliation, and the processing of genetic data, biometric data aimed at

uniquely identify a natural person, data related to health or data

relating to the sexual life or sexual orientation of a natural person".

2. Section 1 will not apply when one of the

following circumstances:

(...)

g) the treatment is necessary for reasons of an essential public interest, especially the basis of the law of the Union or of the Member States, which must be proportional to the objective pursued, respect essentially the right to protection of data and establish adequate and specific measures to protect the interests and fundamental rights of the interested party.

Therefore, even if the personal data that may be processed for these purposes contained data included in the special categories of personal data referred to in article 9 RGPD, the prohibition that it contains section 1 of the same would not be applicable when the exception established in letter g) of section 2 of said article 9.

On the other hand, the adaptation to the RGPD, applicable as of 05/25/2018, required the development of a new organic law to replace the current one, issuing the Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (LOPDGDD).

Additional Provision 7 of the same states:

"1. When it is necessary to publish an administrative act that contains personal data of the affected party, it will be identified by its name and surnames, adding four random numerical figures of the document national identity, foreigner identity number, passport or document equivalent. When the publication refers to a plurality of affected parties, these Random figures should alternate.

When it comes to notification through advertisements, particularly in the assumptions referred to in article 44 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations, will be identified

to the affected party exclusively by means of the complete number of his national document identity card, foreign identity number, passport or equivalent document.

When the affected party lacks any of the aforementioned documents

in the two previous paragraphs, the affected party will be identified only by his

Name and surname. In no case should the name and surnames be published in a

together with the complete number of the national identity document, number of foreign identity, passport or equivalent document.

2. In order to prevent risks for victims of gender violence, the Government

will promote the development of a collaboration protocol that defines procedures

insurance of publication and notification of administrative acts, with the participation of bodies with competence in the matter.

Finally, the follow-up work in cases of gender violence

In many cases, they imply the need to share information between professionals.

of different areas and administrations, establishing Law 27/2003, of July 31,

Regulatory Order of Protection for victims of domestic violence that

specifically included article 544 ter in the Law of Criminal Procedure, in

whose section 8 establishes:

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“8. The protection order will be notified to the parties, and communicated by the

Judicial Secretary immediately, through full testimony, to the victim and the

Competent public administrations for the adoption of protection measures,

whether these are security or social, legal, health, psychological or

any other kind. For these purposes, a system will be established by regulation integrated system of administrative coordination that guarantees the agility of these communications”.

In addition, section 5 of said article establishes that:

"5. The protection order confers on the victim of the facts mentioned in section 1 a comprehensive statute of protection that will include the measures civil and criminal precautionary measures contemplated in this article and those other assistance and social protection measures established in the legal system.

The protection order may be enforced before any authority and Public administration".

In light of the foregoing, the processing of personal data necessary for the comprehensive protection of victims of gender-based violence, it should be considered a essential public interest, and is also proportional to the objective pursued.

v

Article 83.5 a) of the RGPD, considers that the infringement of “the principles basic for the treatment, including the conditions for the consent in accordance with of 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 LOPDGDD in its article 72 indicates: “Infringements considered very serious:

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

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

(...)

Also the LOPDGDD in its article 77, Regime applicable to certain categories of controllers or processors, establishes the following:

"1. The regime established in this article will be applicable to treatments of which they are responsible or entrusted:

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- 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

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.

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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.

v

As stated in the initial agreement, made second, the Service of Inspection of this management center sent up to three requests for information to the party claimed with dates 08/14/2018, 01/16/2019 and 02/19/2019, so that provided the legend that should appear in the work life report in the event that leave was requested for gender violence; the respondent answered the 02/20/2019 providing the modification made in the report on the working life of the claimant.

Likewise, notified of the start agreement, with the date of acknowledgment of receipt 05/06/2019, the respondent has not made allegations to it.

In the previous rationale IV it was indicated that the modification proposed by the claimed was not considered adequate when referring to the inclusion in the report on the working life of the date of leave as a result of article 29.8 of Law 30/1984, of August 2, on Measures to Reform the Public Function, since in Said precept establishes: “8. Leave of absence due to gender-based violence on the

female civil servant", therefore, a formula must be included in the report that makes direct or indirect reference to the specific reason indicated without revealing said circumstance.

To state that despite the high degree of sensitivity and commitment existing in this matter at the different levels of the Public Administrations offering adequate solutions to the situations of public employees by reason of gender-based violence, the lack of response from the claimed in light of the situation of risk suffered by the claimant.

Article 77.2 of the LOPDGDD contemplates in the case of Entities Public a sanction of warning for the infractions referred to in the articles 72 to 74 of said organic law; however, according to article 58.2 of the RGD the control authority also has other corrective powers; So section d) of article 58.2 establishes that:

"two. Each supervisory authority will have all of the following powers corrections listed below:

(...)

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 of time.

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Likewise, the respondent is reminded that article 77.3 of the LOPDGDD states that "3. Notwithstanding the provisions of the preceding section, the authority of 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
appropriate.”

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 GENERAL TREASURY OF THE SECURITY

SOCIAL, with NIF Q2819018I, for an infringement of Article 5 of the RGPD, typified in
article 83.5.a) of the RGPD, a sanction of WARNING in accordance with
the provisions of article 58.2.b) of the RGPD.

SECOND: NOTIFY this resolution to the GENERAL TREASURY

OF SOCIAL SECURITY and INFORM the claimant Ms. A.A.A. about him
result of the claim.

THIRD: Likewise, in accordance with article 58.2.d) of the RGPD, it is ORDERED to
the GENERAL TREASURY OF SOCIAL SECURITY, with NIF Q2819018I, which
Proceed to inform and certify documents within a month to the AEPD the
measures taken to ensure that the information provided in the report on the
working life of the staff at your service is adjusted to the regulatory provisions and
prevent the disclosure of circumstances related to gender-based violence that may
to be known by third parties.

FOURTH: COMMUNICATE this Resolution to the Ombudsman of
in accordance with the provisions of article 77.5 of the LOPDGDD.

In accordance with the provisions of article 50 of the LOPDPGDD, 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 LOPDPGDD, 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

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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

Sea Spain Marti

Director of the Spanish Data Protection Agency