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File identification

Archive resolution of the previous information no. IP 284/2019, referring to the Illustrious Bar Association of Girona.

Background

1. En data (...), va tenir entrada a l'Autoritat Catalana de Protecció de Dades, per remissió de l'Agència Espanyola de Protecció de Dades, un escrit d'una persona pel qual formulava una denúncia contra a l' Illustrious Bar Association of Girona (henceforth, ICAG), due to an alleged breach of the regulations on the protection of personal data.

The complainant (Mr. (...)) who had been a member of the ICAG, set out in his letter, among others, the following facts:

a) That on the days (...) various media, such as (...) (some of them citing (...) -(...)-) as the source of the information publish information relating to your person. Thus, by way of example, the digital media (...), published the following information:

(...)

b) That the ICAG had filed the following files no.: (...) -052, (...) -107 and (...) -131C.

c) That the ICAG had resolved file no. (...) -131C on date (...).

d) That he had filed an administrative appeal against the resolutions of the procedures listed above.

e) That the ICAG had revoked and canceled files (...) -107 and (...) -131C, on dates (...), respectively.

f) That, in the letter dated 18/(...), through which the legal representation of (...) responded to the claim that the complainant here had brought against (...)) and other media, for violation of their right to honor (ordinary procedure (...)) Court of (...), the following text was collected:

"(...)

In relation to the above, the complainant complained that the ICAG disclosed to third parties, specifically to the journalist from (...), data relating to her person.

This fact would be proven - always according to the reporting person - in view of the following:

1. From the information published on (...) in various media, in which it was reported that the complainant here (...), as well as the fact that he had several files open to

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the ICAG that were "stopped but could resume (...)". The reporting person proves that the news cites the ICAG as the source of the information.

2. From the content of the letter that the legal representation of (...) presented to the judicial body on 18/(...) (letter f/ precedent), it would appear that on the date of this writing (...) knew the numbers of the 3 files that the ICAG had given him and the dates of their resolution. The complainant pointed out that, to the extent that file no. (...) - 131C had not been resolved until (...), the leakage of this data - or at least that relating to this specific file - would have taken place after the date of its resolution.

The reporting person provided a lot of documentation related to the events reported.

2. The Authority opened a preliminary information phase (no. IP 284/2019), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/(...), of October 1, of the common administrative procedure of public administrations (henceforth, LPAC), for to determine whether the facts were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances that were involved.

3. In this information phase, on 19/11/2019 the reported entity was required because comply with the following:

1. Report whether the ICAG or staff in its service would have revealed to a journalist from (...) the data relating to the person making the complaint that are indicated in sections 1 and 2 of the precedent 1st *in fine*. If so, indicate the specific data provided, on which date and the legal basis that would have enabled this communication.
2. Inform to which persons and/or entities the IGAC communicated or notified the resolutions of the 3 files it had instituted against the person making the complaint and provide documentary evidence of the dates on which each of the communications/notifications took place.
3. Report if the 3 controversial files had been suspended. If yes, please report:
 - a) On what date was the suspension of each file agreed upon; and, b) to which persons or entities this suspension would have been notified/communicated.

4. On 26/11/2019, the ICAG responded to the aforementioned request through a letter in which it set out the following:

- That "*currently Mr. (...) is not a member of the ICAG, given that he left on 24.11.(...). According to the census of lawyers of the General Council of the Bar, he is registered as a practicing member of the ICAFI (Illustrious Bar Association of Figueres – Alt Empordà). Regarding the disciplinary file (...) -107, point out that Mr. (...) is not an interested party. We have considered that it is necessary to refer to the file (...) -107*".
- That "*the ICAG was not consulted by any journalist from (...) contrary to what the note from (...) from (...) says. No journalist from this (...) addressed the ICAG. (...) In the other hand,*

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ICAG does not have and has never had a head of press or similar position (...). We insist on this point: it is not true that ICAG informed any journalist about data or references in the case. The ICAG only makes this class of actions public in accordance with article 89.1 of Royal Decree 658/2001, of June 22, which approves the General Statute of the Spanish Bar, and article 5. u of Law 2/1974, of February 13, on Professional Colleges. We note that the news itself says that the information on the specific files referred to would have been obtained by the journalist through "her own means", which excludes the ICAG's intervention in obtaining this information".

- That "with respect to the files and sanctions subject to these actions, the ICAG has not made the notifications of art. 89.1 of the General Statute of the Bar, when Mr. (...) as a member of the ICAG and registered with the ICAFI. According to the Regulations of the Catalan Bar (art. 98.1) the enforcement of sanctions corresponds to the Association to which the lawyer is incorporated and not to the Association that imposed the sanction.

In addition, on date 9.4.(...), the ICAG revoked and left without effect the agreement of the Board of Governors dated 1 October (...), which imposed the sanction in the "file (...) -107".

- That, "the resolutions adopted by the ICAG in disciplinary files no. (...) -052, (...) -107 and (...) -131C were notified to the interested parties in the respective files, to the ICAFI for their execution ((...) -052), and to the judicial authority when the administrative file is required for the processing of the administrative contentious resources formulated by Mr.

(...). It should be borne in mind that the disciplinary files (...) -052 and (...) -107 are related, given that they referred to the same facts.

Specifically, the following communications of the respective resolutions were made:

- In the disciplinary file no. (...) -052:
 - 13.7.(...) Resolution personally notified to the lawyer (Document 1)
 - 17.7.(...) Notification of resolution to the Court (...). (Document 2)
 - 3.3.(...) Notification to the ICAFI for execution of the 3 months of (...), because Mr. he was (...) registered with the ICAG and registered with the ICAFI (Document 3)
 - 28.5.(...) at the request of the Court (...), in Abbreviated 381/(...), the resolution adopted in the appeal filed by Mr. (...) against the ICAG agreement of 9.4.(...). (Document 4)
 - 31.5.(...) CGAE communicates the ICAFI's execution of the ICAG sanction in file no. (...) -052, from 22.3. (...) to 21.6.(...). (Document 5)
 - 22.1.2019 Delivered copy of the file to the Court (...), in Abbreviated 381/(...). (Document 6).
- In the disciplinary file no. (...) -107:
 - 7.10.(...) Resolution notified to the lawyer via burofax (Document 7)
 - 8.10.(...) Notified resolution to the Court (...). (Document 8)
 - 28.5.(...) at the request of the Court (...), in Abbreviated 381/(...), the resolution adopted in the appeal filed by Mr. (...) against the ICAG agreement of 9.4.(...). (Document 4)
 - 22.1.2019 Delivered copy of the file to the Court (...), in Abbreviated 381/(...). (Document 6)
- In the disciplinary file (...) -131C:
 - 31.7.(...) Resolution notified to the lawyer (Document 9)

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- 17.8.(...) *Notified resolution to the Court (...) (Document 10)*
- 21.5.(...) *Delivered a copy of the file to the Court (...), in Ordinary appeal 286/ (...). (Document 11)*
- That *"It was not agreed to suspend any of the files that are the subject of this procedure. On the other hand, it should be noted that the fact that a lawyer is serving a sanction of (...) does not mean that the other disciplinary proceedings must be suspended in their processing or in their execution, given that they can continue processing and the final resolution can be executed, establishing its compliance immediately following the sanction of (...) that is in compliance. In this sense, the news that indicated that "the lawyer Mr. (...) (...)"*.

The reported entity attached to the letter a copy of the notifications related to its response.

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Act, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the (...) Catalan Data Protection Authority, the director of the Catalan Data Protection Authority is competent to issue this resolution.

2. Based on the account of facts that has been set out in the background section, it is necessary to analyze the reported facts that are the subject of this file resolution.

2.1. About the data published in various newspapers dated (...).

The complainant in his written complaint referred, in the first term, to the information published in several newspapers which reproduced, in turn, the information published by the (...) (letter a/ antecedent 1):

" (...)."

In view of the publication, the complainant complained that the ICAG had leaked to the journalist of (...) the fact that (...).

For its part, the ICAG, in the written response to this Authority's request, has denied categorically be the source of the published information.

In this regard, it is appropriate to file the complaint regarding the eventual leakage of the specific data published in various media on (...), based on the following considerations

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2.1.1.- The article published on (...), certainly cites ICAG as the source of the information (...). Nevertheless, an eventual error by the journalist in citing the source of the information cannot be ruled out; taking into account that in the document formulating the legal representation of the (...)el 18/(...) before the Court (...) (letter f/ of the 1st antecedent), it is cited in "the head of press of the ICAG" like the person who directly provided the data, it appears that the ICAG denies ever having existed in the institution. In any case, it cannot be denied that there is a divergence here, and in relation to this particular data, between the versions of the journalist and the IGAC, as regards the origin of the information.

On the contrary, from the wording of the article, it cannot be so clearly inferred that the (...) came from the College itself. In fact, in the amended letter that on 18/(...) formulated the legal representation of (...) before the judicial body, it is indicated that this specific information "*I can verify por sus propios medios*" the journalist (...) who wrote the article.

Leaving aside the different versions between the journalist from (...) and the ICAG about what was the source of the information, what needs to be highlighted is that both the information that referred to (...), was information available - on the date of publication of the news - not only to ICAG, but also to other entities and judicial bodies. Thus, with regard to the information relating to (...), the same court that heard about the matter (...), the Provincial Court (...), and (...) here (...). In addition, it should be borne in mind that article 99 of the regulations of the Catalan Bar establishes that disciplinary sanctions involving (...) they must be communicated to the General Council of the Bar so that it can be transferred to the other associations and judicial bodies.

With regard to the information relating to the fact that the complainant here had several files open at the ICAG, as reported and certified by the ICAG, there were several entities - apart from the ICAG - that, on the date the news was published, they were aware of the existence of the files that had been resolved against the complainant here: on the file (...) -052, the Court (...), the General Council of the Spanish Bar and the ICAFI; and on file (...) -107, the Court (...). In addition, it is stated in the proceedings that the Court (...) also had this information, to the extent that the complainant here had appealed the resolutions issued by the IGAC. In short, in (...), aside from the lawyer concerned and the ICAG, they were aware of the existence of the files filed against the complainant here, the ICAFI, the Court (...) and the Court (...).

From what has been said so far, it should be noted, as evidenced in the proceedings, that on the date of the publication of the news relating to the complainant here ((...)), he was aware of all the data published (...) - apart from the complainant himself - not only by ICAG, but also by the Court (...)

On the specific published information relating to (...)", apart from being a not entirely rigorous data - in accordance with what the ICAG reported in its letter of response to the request of this Authority-, this is generic information on how to execute the sanctions

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by the bar associations, so this is not information that only the ICAG could be aware of.

The Supreme Court, in its judgment of 03/27/1998, declares that one of the fundamental principles of penal law is the principle of responsibility, now enshrined in article 28 of Law 40/(...), of 1 October, of the legal regime of the public sector, under which the sanctioning reproach for the imputed violation can only fall on the author of the infringement.

In the case we are dealing with, it has been shown that there were several entities and judicial bodies that had the controversial information, and it has not been possible to determine without a doubt which of them would have provided the information to the (...), which means that it is not possible to determine the person responsible for any infringement that may have been committed.

This principle of responsibility is intimately linked to another of the inspiring principles of the criminal order, which also govern the matter of penal law, with some nuance but without exceptions. This is the right to the presumption of innocence, enshrined in article 24.2 of the Spanish Constitution and article 53.2.b) of the LPAC, which determines that *"The sanctioning procedures must respect the presumption of non-existence of responsibility administrative until proven otherwise"*.

In accordance with the principles of presumption of innocence and *in dubio pro reo*, in the area of sanctioning authority, the burden of proving the facts and their authorship falls on the accuser. In short, the presumption of innocence must always rule without exception in the penal system and must be respected in the imposition of any penalty.

In this sense, the Constitutional Court, in its Judgment 76/1990 of 26/04, considers that the right to the presumption of innocence entails *"that the sanction is based on acts or probatory means of charge or incrimination of the reprehensible conduct ; that the burden of proof corresponds to the accuser, without anyone being obliged to prove their own innocence; and that any inadequacy in the results of the tests carried out, freely assessed by the sanctioning body, must be translated into an absolute verdict"*.

And in the same terms, the Judgment of the National Court of 18/03/2009 (ratified by the Supreme Court by means of a Judgment of 16/05/2012) was pronounced, which confirmed a resolution of the (...) Spanish Data Protection Act under which the archive of the previous information actions was declared because it was considered that there was no evidence of the authorship of the reported facts that would allow the same to be imputed: *"The appealed resolution recognizes that the reported conduct could have given rise to a breach of the duty of secrecy in application of the provisions of Article 10 of Organic Law 15/99 and that it could give rise to the imposition of a penalty for carrying out a non-consented data treatment (...). However, the only argument on which the file is based is that it has not been possible to prove who could be responsible for the offense committed."*

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The presumption of innocence thus becomes the basis of the archive resolution and a new assessment of the facts carried out by this Chamber obliges to confirm said criterion because said presumption (proceeding from Article 24 of the EC), is an essential figure of the punitive law and, therefore, applicable to the administrative sanctioning area (article 137 of the Law on the Legal Regime of Public Administrations and of the Common Administrative Procedure), implies the existence of a minimum evidentiary activity of charge, practiced with observance of all guarantees proceedings, from which the culpability of the accused can be deduced; to this is added the right to defense under the terms of the current sanctioning regulations (art. 135 LRJA-PAC in relation to arts. 16 to 19 of RD 1,398/1993), for which there is no sufficient proof, it turns out that it is not possible to determine without a doubt that the ICAG was the source of the controversial information since this college denies it and, as has been said, it is proven that other entities also had the same information, and this leaving aside the fact that neither it cannot be ruled out that people from the family, social and/or work environment of the reporting person were aware of this information. This is why it is not possible to demand responsibility from the ICAG for any disclosure of the data of the person reporting here, in accordance with the principles of responsibility for infringements and presumption of innocence.

In short, in the case at hand, despite admitting that the ICAG had the information that (...) published on (...), the truth is that it is not possible to determine without a doubt that the ICAG was the source of the controversial information since this college denies it and, as has been said, it is proven that other entities also had the same information, and this leaving aside the fact that neither it cannot be ruled out that people from the family, social and/or work environment of the reporting person were aware of this information. This is why it is not possible to demand responsibility from the ICAG for any disclosure of the data of the person reporting here, in accordance with the principles of responsibility for infringements and presumption of innocence.

2.1.2.- For the denied case, and only for hypothesis purposes as long as it has not been proven that any of the entities or judicial bodies mentioned in section 2.1.1. precedent, had provided the (...) the data relating to the complainant here, the eventual infringement that this disclosure would have entailed was already time-barred at the time the complaint was received by this Authority.

Indeed, the hypothetical disclosure denounced, if it had occurred, would constitute an infringement classified as serious in article 44.3.d) in relation to article 10 of Organic Law 15/1999, on the protection of personal data (currently repealed but valid on the dates the news was published); offense that had a two-year statute of limitations from its commission, in accordance with article 47 of the LOPD. Taking into account that the eventual disclosure would have occurred at the latest on the day of publication of the news ((...)), the offense committed would have prescribed on (...) much before the date ((...)) in which the letter of complaint was received by this Authority. The prescription of the infringement causes the extinction of the responsibility that could be derived from the eventual infringing conduct, and prevents the initiation of disciplinary proceedings.

2.2.- About the information included in the letter that the legal representation of (...) formulated before the court on 18/(...).

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The complainant complained that, as can be inferred from the letter that the legal representation of the (...) formulated before the Court(...), the (...) of news knew the numbers of disciplinary proceedings brought against him by the ICAG and the dates on which they were resolved. In addition, the person making the complaint gave evidence that certain information had been leaked by the ICAG on (...) from (...), the date on which the resolution of one of the files was issued ((...) -131C).

Here too the IGAC has categorically denied being the source of this information. First of all, it must be emphasized that the information included in the written representation suffers from several inaccuracies; thus, file (...) -052 was not resolved on 07/13/(...), but on 07/10/(...); and the file identified with no. (...) -107 was actually the no. (...) -107 (it means that coincidentally the person reporting here had also wrongly identified him in his report before this Authority), file that had been resolved on 1/10/(...) and not on 09/07/(...), as indicated by mistake in the written representation. These inaccuracies, both in the numbering of files and in the date of their resolution, make it doubtful that they come from an entity that would have direct and reliable information on said files, such as the ICAG.

In any case, what is an unquestionable fact is that on the date of the letter formulated by the legal representation of (...) (18/(...)) this entity had specific information (all and that some are inaccurate) on the files initiated by the ICAG on the herein complainant. But what is also evident, as was the case with the information published on (...) in various media, is that there were various entities and judicial bodies that on 18/(...) had this information, apart from the ICAG: the Court (...) and the Court (...), so any of these judicial bodies could also have been the source of the information.

As was the case with the information analyzed in point 2.1 above, despite admitting that ICAG had the information that the legal representation of (...) collected in the letter that on 18/(...) it addressed to the Court of (...), the truth is that it is also proven that other entities/bodies had, as we have seen, this same information. That's why here too it is not possible to demand responsibility from the ICAG for any disclosure of the data contained in the letter of the legal representation of (...), and this based on the same principles of responsibility for violations and presumption of innocence already invoked and analyzed.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have been addressed in this resolution, no fact that could be constitutive of any of the violations provided for in the legislation on data protection, should be archived.

Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is made clear in the instruction of the procedure: "a) *The non-existence of the facts that may constitute the infringement;* b) *When the facts are not proven;* (...) e) *When it is concluded, at any time, that the infringement has prescribed*".

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resolution

Therefore, I resolve:

1. File the actions of prior information number IP 284/2019, relating to the Illustrious Bar Association of Girona.
2. Notify this resolution to the Illustrious Bar Association of Girona. and the reporting person.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of February 20, which approves the Statute of the (...) Catalan Protection of Data, the interested persons can] file, with discretion, an appeal for replacement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, d in accordance with the provisions of article 123 et seq. of Law 39/(...). An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998 , of July 13, governing the contentious administrative jurisdiction.

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,