

Summary. - Contentious-administrative appeal filed by Asedie, against Royal Decree 327/2021, of May 11, which modifies Royal Decree 181/2008, of February 8, on the organization of the BOE (Official State Gazette), to adapt it to the Single Judicial Edictal Board.

In June 2021, after the publication of the said Royal Decree, Asedie's Board of Directors approved the filing of a contentious-administrative appeal against the Royal Decree 327/2021, of May 11, that modifies Royal Decree 181/2008, published in the BOE of May 12, 2021.

The specific reason for the appeal was based on the fact that the Royal Decree 327/2021, had changed the meaning of one of the existing paragraphs, introduced by RD 385/2015, **restricting the conservation, storage and treatment of the information published in the BOE (official state gazette) supplements impeding the re-use of this information:**

Point 4 of article 14 was worded as follows:

"4. Notwithstanding the provisions of the preceding sections, the Notification Supplement will remain freely accessible on the Official State Gazette Agency's website for a period of three months from its publication, after which the verification code of the corresponding notification announcement will be required, which will be unique.

The said code may only be conserved, stored and processed by the interested party or his representative, as well as by the bodies and Administrations that may require it for the exercise the powers that correspond to them.

The Official State Gazette Agency will adopt measures aimed at avoiding the indexing and automatic recovery of verification codes by subjects other than those referred to in the preceding paragraph.

Without prejudice to the provisions of the first additional provision, once the three-month period established in the first paragraph has elapsed, the Official State Gazette Agency will provide, upon request, the information contained in the notification notice only to the interested party or their representative, the Public Prosecutor, the Ombudsman, and the Judges and Courts."

The new Royal Decree 327/2021, replaces the code with information published in the supplements:

"The conservation, storage and treatment of the information published in the supplements is only permitted for the interested parties or their representatives, the Courts and Tribunals, the Public Prosecutor's Office, as well as the Administrations that may specify it to exercise the powers that correspond to them."

On July 7, 2021, ASEDIE, filed the contentious-administrative appeal against Royal Decree 327/2021. The said appeal has been processed before the Supreme Court and was filed to the extent that ASEDIE understood that said Royal Decree 327/ 2021 **restricted the conservation, storage and treatment of the information published in the BOE supplements** to the interested parties, or their representatives, Courts and Tribunals, the Public Prosecutor's Office, and the Public Administrations.

Due to the direct implication that this change has in the business or activity of the companies associated to Asedie, those belonging to the infomediary sector, the Association requested

the annulment of the newly added third paragraph in section 4, art. 14 of Royal Decree 181/2008 (modified by article 4 of Royal Decree 327/2021) for the following reasons:

1. being contrary to law due to the violation of the principle of legal certainty,
2. the infringement of the provisions of the re-use of public information regulation and
3. the infringement of the personal data protection regulations provisions; due to infringement of the provisions of articles 9.3 and 105.b) of the CE, in Law 19/2013, in Law 37/2007, in the GDPR and other concordant regulations.

On July 13, 2022, Asedie received the ruling on the Appeal to Royal Decree 327/2021, issued by the contentious-administrative chamber of the Supreme Court.

The Court declared, the annulment of the newly added third paragraph in section 4, art. 14 of Royal Decree 181/2008 (modified by article 4 of Royal Decree 327/2021).

The Court upheld Asedie's request for annulment considering that the said paragraph is contrary to the re-use of public sector information regulations and determines that the paragraph establishes a re-use prohibition that exceeds the limitations of the law's application scope provided for in the Article 3, Law 37/2007 and is not in accordance with the re-use regime provided for in art. 4 of the aforementioned law.

"... Article 4, sections 1 and 2, of Law 37/2007 establishes the general rule for the re-use of public administration documents, which must ensure that the documents, to which the rule is applicable, can be re-used for commercial or non-commercial purposes in any of the ways determined: without being subject to conditions, being subject to conditions established in standard licenses, upon request or with exclusive agreements.

However, the controversial paragraph, as it only allows the interested parties or their representatives, Courts, Tribunals, Public Prosecutor's Office and Administrations, to treat the information published in the supplements, without exceptions, therefore including information that contains both personal data and legal persons and companies data, from Public Administrations announcements, establishes a re-use prohibition, which exceeds the limitations of the law's application scope provided for in the Article 3, Law 37/2007 and is not in accordance with the re-use regime provided for in article 4 of the aforementioned regulation".

Additionally, the Supreme Court disputes the State Attorney's various thesis and, in particular, does not share their interpretation of the scope of the concept of *interested parties*, as it does not agree that, in addition to referring to the person to whom the data belongs to, it also includes those who have a legitimate interest.

The controversial paragraph is declared null and void and will disappear from the legal system.

On September 19, 2022, Asedie received notification of the declaring a final judgment and on September 26, 2022, the outcome was published in the BOE (official state gazette).

(in the "analysis" tab) <https://www.boe.es/buscar/doc.php?id=BOE-A-2021-7843>