 File No.: PS/00195/2022

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

to the following

BACKGROUND

FIRST: On April 29, 2022, the Director of the Spanish Agency for

Data Protection agreed to start a sanctioning procedure against EDITORIAL PRENSA

CANARIA, S.A. (hereinafter the claimed party). Notified the start agreement and after

analyze the allegations presented, on September 29, 2022, the

proposed resolution that is transcribed below:

<<

File No.: PS/00195/2022

PROPOSED RESOLUTION OF SANCTION PROCEDURE

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

to the following:

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claiming party), dated ***DATE.1,

filed a claim with the Spanish Data Protection Agency (hereinafter,

AEPD). The reasons on which the claim is based are the following:

The complaining party reports that several media outlets published on their

websites the audio of the statement before the judge of a victim of a rape

multiple, to illustrate the news regarding the holding of the trial in a case that was

very mediatic The complaining party provided links to the news published in

the claimed media websites.

On ***DATE.2, a new letter sent by the complaining party was received

stating that he had been able to verify that there were means that had eliminated

this information, although it accompanied publications made by some media

communication on Twitter where it was still available.

SECOND: Dated ***DATE.3, in accordance with article 65 of the Law

Organic 3/2018, of December 5, Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), the claim was admitted for processing

submitted by the complaining party.



THIRD: The General Subdirectorate of Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the investigative powers granted to the authorities of

control in article 58.1 of Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter GDPR), and in accordance with the provisions of the

Title VII, Chapter I, Second Section, of the LOPDGDD, being aware of the

following extremes:

During the investigation actions, publications were found, more than

those initially denounced by the complaining party, where the voice of the complainant could be heard

undistorted victim. Among them, the following publication of EDITORIAL DE

PRENSA CANARIA, S.A., with NIF A35002278 (hereinafter, the claimed party):

***URL.1

On ***DATE.4, the defendant was notified of a precautionary withdrawal measure

urgent content or distorted voice of the intervener in such a way that

will be unidentifiable in the web address from which this was accessible

content.

On ***DATE.5, a letter sent by this entity was received by the AEPD

stating that he had proceeded to the definitive suppression of the video; checking

that the video with the victim's statement had been replaced by a still image

of the courtroom in which the victim cannot be recognized.

FOURTH: On April 29, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,

of the Common Administrative Procedure of Public Administrations (in

hereafter, LPACAP), for the alleged infringement of article 5.1.c) of the GDPR, classified as

in article 83.5.a).

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in

the LPACAP, the claimed party submitted a brief of allegations on May 18,

2022 in which, in summary, he stated that:

1.- The agreement to start the disciplinary procedure refers to some

previous investigation actions that have been taken into account for its issuance,

for which reason it requests the hearing process and a copy of such elements of judgment, which will be

object, where appropriate, of new allegations.

2.- The agreement to start the disciplinary procedure refers to D.A.A.A. as

"complaining party". However, article 65 of the LOPDGDD indicates that the

claimant must be affected, for which reason it is requested that it be clarified if D.A.A.A. act

"In the exercise of an invoked or accredited representation of the victim of the

rape."

3.- He denies the allegedly infringing acts that are imputed to him because "although the

contained in www.laprovincia.es belong to EPC, and at the indicated address

published a news (still available, without any video), this fact is not true. So, the



published voice in no case allowed their identification, not constituting any data

staff."

It also indicates that “D. A.A.A.

maintained that "remain available the

publications made in the profiles of these media outlets on Twitter”. Well then,

It is also denied that EPC has published any video referring to the victim on

Twitter.”

4.- Indicates that the AEPD has assumed an identity between the voice of the victim and the voice

published that he is not aware of, thus violating his presumption of innocence.

For this reason, he requests that the following test be carried out: "an indubitable sample of the

voice of the victim, in a file, leaving a record of its corresponding HASH.

Likewise, it is interested that a copy of the video file that was

published at the address ***URL.1, stating its corresponding HASH.

All of this, in order for EPC to deliver both files and their

respective HASH, and order an acoustic expert report that analyzes the height,

intensity and timbre of both voices, to conclude if they present features that associate it

to the same individual or not.

5.- The defendant denies having signed the Digital Pact for the protection of

people, so that "the effectiveness that it would have had in grading the sanction

proposal would have to be eliminated, with the corresponding reduction."

6.- It considers that the agreement to start the disciplinary procedure "does not characterize adequately the facts attributed to EPC, as long as it does not refer to the period during which the infringement that he imputes would have lasted", especially taking into account account that he assesses the circumstances consisting of the nature, seriousness and duration of the offence.

For this reason, he understands that the initiation agreement must be completed and a new processing of allegations, under penalty of causing him material defenselessness.

7.- You also understand that the lack of specificity of the type infringing party, because although the initiation agreement indicates that the alleged infringement consists of the violation of article 5.1.c) of the GDPR, it establishes that "Personal data shall be (...) Adequate, pertinent and limited to what is necessary in relation to the purposes for those who are treated (<<data minimization>>)", for which he considers that the infringing type has a triple content, without the initial agreement indicating which of the three has been violated.

For this reason, he again requests that the initiation agreement be completed and that he be granted a new claims process.

8.- It considers that an incomplete treatment of the principle of guilt, based on the aforementioned denial of the possibility of identification of the victim and in which the guilt "would derive, where appropriate, from having weighed in a erroneous and inexcusable freedom of information and the right to data protection".

It indicates that "the allegedly infringing activity consisted of the application of a indeterminate legal concept. In this sense, legal concepts indeterminate are characterized by having a single correct legal solution, which can be found in three situations: either a clear affirmative answer (zone white); or a clear negative answer (black zone); or, more commonly, an answer one way or the other, which is difficult to achieve (gray area)."

It understands that, in the present case, the balance between the two legal concepts indeterminate (freedom of information and the right to data protection) is in the gray area, hence the extension of the argumentation of the initial agreement.

And by the fact of being in that area, he considers that the error is excusable, which entails the exclusion of guilt.

He points out that "it is evident that the AEPD criteria will be the prevailing one. But what EPC would have reached, before knowing the criteria of the AEPD, a conclusion different, without having incurred in error or arbitrariness, excludes the possibility that I would have acted with guilt."

He concludes by indicating that, since he has not acted with fraud or negligence, he cannot reach to impose a sanction, for which reason the procedure is filed sanctioning.

9.- Finally, the claimed party indicates that there is no motivation in the graduation of the proposed sanction, considering that "it was appropriate that he had indicated the amount of the sanction proposed without such aggravating factors, as well as the impact on it of each of they."

In any case, it understands that the amount of the sanction is excessive "given the characteristics of the imputed conduct and the subjective relationship of EPC with it", for which reason it requests its reduction.

SIXTH: On May 19, 2022, the file was sent to the claimed party,

granting at the same time a new term to present allegations, without such

fact has taken place.

SEVENTH: A list of documents in the file is attached as an annex.

procedure.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: On ***DATE.1, the claimant filed a claim with the

AEPD denouncing that various media outlets published on their websites

the audio of the statement before the judge of a victim of multiple rape, to

illustrate the news regarding the holding of the trial in a case that was highly mediated,

providing links to news published on media websites

claimed.



On ***DATE.2, a new letter sent by the complaining party was received

stating that he had been able to verify that there were means that had eliminated

this information, although it accompanied publications made by some media

communication on Twitter where it was still available.

SECOND: The General Sub-directorate of Data Inspection, in the exercise of its

investigative activities, found a publication of the Respondent where

could hear the victim's voice undistorted at the following address:

***URL.1

THIRD: Within the framework of the previous investigation actions, dated

***DATE.4, the party claimed was notified of an urgent precautionary measure to withdraw

content or distorted voice of the intervener in such a way that it would be

unidentifiable in the web addresses from which this content was accessible, in

concrete of:

***URL.1

FOURTH: On ***DATE.5, the AEPD received a letter sent by it

entity reporting that the content referenced in the precautionary measure had been

removed.

FIFTH: It is verified that in the link ***URL.1 the video with the declaration of the

victim has been replaced by a still image of the courtroom.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of the GDPR grants to each authority of

control and as established in articles 47 and 48.1 of the LOPDGDD, it is

competent to initiate and resolve this procedure the Director of the Agency

Spanish Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

The claimed party begins indicating that the agreement to start the procedure

sanctioner refers to D. A.A.A. as "complaining party". However, the article

65 of the LOPDGDD indicates that the claimant must be affected, for which reason it is requested

that it be clarified if D. A.A.A. acts “in the exercise of an invoked or accredited

representation of the victim of rape.”



D.A.A.A. has not presented a document accrediting the representation of the victim

of the rape. This person informed the AEPD of some facts that he did

for it to initiate inspection proceedings. In any case, this does not constitute in any way

any formal defect in the processing of this procedure that may

have rendered the interested party defenseless.

II

The claimed party continues to deny the allegedly infringing facts that were

accused because "although the contents in www.laprovincia.es belong to EPC, and

a news item was published at the indicated address (still available, no video),

that fact is not true. Thus, the published voice in no case allowed its identification,

not constituting any personal data.”

In the first place, and without prejudice to its more detailed examination in the Fundamento

of Law X of this proposed resolution, it should be noted that the voice of any

person is personal data and identifies or makes it uniquely identifiable.

Thus, the voice fits perfectly into the definition of what is a character data

personnel of article 4.1) of the GDPR, verifying that the four

components indicated in Opinion 4/2007 of the Article 29 Working Group

on the concept of personal data: all information about a natural person

identified or identifiable. The reference to all information refers to the concept

broad definition of what constitutes personal data, which requires a

broad interpretation.

In the present case examined, the victim's voice identifies her directly

in their environment (understood in a broad sense, encompassing the family and the social),

that, as determined in the aforementioned Opinion 4/2007, "it can be

consider a natural person "identified" when, within a group of

persons, it is "distinguished" from all other members of the group. And there is a

clear treatment if the voice has spread through the media

claimed, under the terms of art. 4.2) of the GDPR.

And it is clear that the voice of any person can make it be identified

at least by those who are part of the circle closest to the victim or may

meet her anyway. Let's imagine relatives or co-workers or

studies, social activities, etc. For this reason, the diffusion of the voice of the victim has

assumed the certain risk that it could have been identified by persons

who were unaware of their status as victims. Which is a particularly serious fact

in an event like the one that gives rise to the news.

In addition, the voice also makes the victim indirectly identifiable to a

larger segment of the population if combined with other data, even with

additional information, depending on the context in question. Again the Opinion

4/2007 clarifies that "In cases where, at first sight, the identifiers

available do not make it possible to single out a specific person, this person can still be

"identifiable", because that information combined with other data (whether the

responsible for their treatment is aware of them as if not) will allow

distinguish that person from others.

Let us also bear in mind that, in the case examined, there is a

easier to make the victim identifiable through his voice in response to the

circumstances of the event and the context in which it is made public: within the framework of

a highly publicized judicial procedure, continuously followed by various

media that provide information about the victim, his

environment, the violators, and the violation suffered (which makes up information

additional).

In this sense, recital 26 of the GDPR determines that "...To determine if

a natural person is identifiable, all means must be taken into account, such as the

singularization, which can reasonably be used by the data controller or

any other person to directly or indirectly identify the natural person.

To determine whether there is a reasonable probability that means will be used to

identify a natural person, all objective factors must be taken into account,

as well as the costs and time required for identification, taking into account both

the technology available at the time of treatment such as advances

technological…”

Every time the claimed party has disseminated such personal data, it has

carried out a treatment of the same, in which the

principles enshrined in the GDPR, in particular the principle of minimization of

treatment of article 5.1.c) of the GDPR.

On the other hand, the claimed party indicates that “D. A.A.A. He maintained that "they remain

available the publications made in the profiles of these media outlets on Twitter”.

Well, it is also denied that EPC has published any video regarding the

victim on Twitter.”

Certainly, the claimed party has not published any such video

on Twitter, in fact, in the brief submitted by the complaining party, there was no

No reference to the claimed part.

For this reason, the initiation agreement states that during the previous actions of

investigation found, regarding the claimed party, the following publication in the

that the victim's voice could be heard without distorting: ***URL.1, with no mention of the

publication of any tweet.

IV.

The claimed party alleges that the Agency has assumed an identity between the voice of the

victim and the published voice that he is not aware of, thus violating his presumption of

innocence.

If the published voice was not that of the victim, why did the claimed party, in his writing

of ***DATE.5, informed the Agency that "From the legal department it is given

transfer of internal informative note to all editorial directors so that they may be

aware of what happened and, as far as possible, is it not carried out again?

publications without distorting the voice of the victim”?



Such an affirmation is equivalent to recognizing that in the publication the voice of the victim was

without distorting, in short, that it was his voice, so a contradiction can be seen

between what was stated by the claimed party in its brief of ***DATE.5 and what is expressed

in his brief of allegations to the initiation agreement, which makes him bankrupt his

presumption of innocence.

For these reasons, the taking of evidence is denied, in accordance with article

77.3 of the LPACAP as unnecessary:

- It is unnecessary to request an indubitable sample of the victim's voice, in a file,

leaving a record of its corresponding HASH whenever the claimed party

in his brief of ***DATE.5 he acknowledges that he published the victim's voice without distorting it.

- It is unnecessary to send the claimed party a copy of the video file that was

published at the address ***URL.1, stating its corresponding HASH,

because the claimed party should have such a copy, as indicated in the

requirement that the Agency issued on ***DATE.4: “Require EDITORIAL

CANARY PRESS, S.A. so that the withdrawal or modification of the contents is

is carried out in such a way that it makes it impossible for third parties to access and dispose of the original,

but guarantee its conservation, in order to guard the evidence that may be

accurate in the course of police or administrative investigation or legal proceedings

that they could be educated."

- By virtue of the foregoing, it is unnecessary to carry out an acoustic expert report,

since it is duly accredited that the claimed party published the voice of the

undistorted victim.

Denying such a fact at this time constitutes a violation of the principle of

own acts. As indicated in the Constitutional Court Judgment 73/1988, of

April 21, "the so-called doctrine of own acts or rule that decrees the

inadmissibility of venire contra factum propium originally arising in the field

of private law, means the binding of the author of a declaration of will

generally of a tacit nature to the objective sense of the same and the impossibility of

later adopt a contradictory behavior, which finds its foundation

last in the protection that objectively requires the trust that is justified

may have deposited in the behavior of others and the rule of good faith that

imposes the duty of consistency in behavior and therefore limits the exercise of rights

objective rights".

Or as stated in the Supreme Court Judgment 760/2013, of December 3: "The

doctrine that is invoked constitutes a general principle of law that prohibits going against

one's own acts (nemo potest contra propium actum venire) as a limit to the exercise

of a subjective right or of a faculty: this is how the sentences of May 9 are expressed

2000 and May 21, 2001. It refers to suitable acts to reveal a legal relationship,

says the judgment of October 22, 2002, which reiterates what the judgment of 25



October 2000 in the sense that it is based on good faith and on the

protection of the trust that the conduct produces; confidence that also stand out

the judgments of February 16, 2005 and January 16, 2006, as well as that it is doctrine

based on the principle of good faith; grounds on which the judgment of

October 17, 2006. What is reiterated by subsequent judgments, such as those of October 2,

2007, October 31, 2007, January 19, 2010 and July 1, 2011; the latter stands out,

In addition to reiterating all of the above, which implies a legal link, it must be very

surely and certainly cautious".

V

The claimed party denies having signed the Digital Pact for the protection of

people, so that "the effectiveness that it would have had in grading the sanction

proposal would have to be eliminated, with the corresponding reduction."

Certainly, the claimed party has not signed the Digital Pact for the protection of

people. However, this fact has not been taken into account by the agreement of

beginning for the graduation of the sanction, since it is not in the

legal basis regarding the criteria that are considered concurrent for the

determination of the sanction.

SAW

The defendant considers that the agreement to start the disciplinary procedure

“does not adequately characterize the facts charged to EPC, insofar as it does not refer to the

period during which the infringement that he imputes would have lasted”, especially

considering that he values the circumstances consistent in nature,

severity and duration of the offence. Therefore, he understands that the

initiation agreement and grant a new claims process, under penalty of

cause him material helplessness.

The jurisprudence repeatedly, as indicated in the Judgment of the Court

Constitutional Law 35/1989, of February 14, "has elaborated on the constitutional notion

defenselessness, three interpretive guidelines reiterated on numerous occasions: from a

part, that "defenseless situations must be assessed according to the circumstances"

of each case (STC 145/1986, of Nov. 24, 3rd legal basis); from another, that the

defenselessness that is prohibited in art. 24.1 of the Constitution does not arise "from the sole and

simple infraction by the judicial bodies of the procedural rules, since the

breach of this legality does not cause, in all cases, the elimination or

substantial reduction of the rights that correspond to the parties due to their

own position in the procedure nor, consequently, the defenselessness that the

Constitution proscribes" (STC 102/1987, of June 17, 2nd legal basis), but rather,

the concept of defenselessness does not necessarily coincide with legal relevance

constitutional with the concept of defenselessness merely legal-procedural, it is

produces the former "when the violation of the procedural norms carries with it the

deprivation of the right to defense, with the consequent real and effective damage to

the interests of the affected party" (STC 155/1988 of July 22, 4th legal basis), and, therefore,



last, and as a complement to the previous one, that art. 24.1 of the Constitution

protects in situations of simple formal defenselessness, since such situations are not the

which in their case should be corrected by granting the amparo, but rather

cases of material defenselessness in which "it could have been reasonably caused

a detriment to the appellant, because otherwise not only the estimate of the amparo

would have a purely formal consequence, but would only delay

unduly the process» (STC 161/1985, of 29 Nov., 5th legal basis).”

In the present case there is no material defenselessness because the claimed party knows the

period of time during which the infringement lasted, since the start date of

the reproached action corresponds to the publication of the news with the voice of

the undistorted victim who performed the claimed part, while the end of the

infringement took place at the time the company removed the video from its website

as a result of the requirement that the Agency notified him on ***DATE.4, that is, the notice

It was posted for over a month.

Due to the foregoing, the allegation that the agreement of

commencement and a new period of allegations is given, since, whenever the claimed party

knew the time during which the infringement occurred, there is no material defenselessness

some.

VII

The claimed party also understands that the lack of

specification of the infringing type, because although the initiation agreement indicates that the infringement

accused consists of the violation of article 5.1.c) of the GDPR, this establishes that

"Personal data will be (...) Adequate, pertinent and limited to what is necessary in

relation to the purposes for which they are processed (<<data minimization>>)", therefore

which considers that the infringing type has a triple content, without the initiation agreement

indicate which of the three has been violated. For this reason, it again requests that the

start agreement and a new claims process is granted.

The principle of minimization, which after all is what the claimed party has

violated, implies that only the minimum data necessary to

fulfill the intended purpose, which in this case is informative.

For this reason, the initiation agreement in its Foundation of Law VII indicates that

"It is tremendously significant that, in the case examined, the part

The defendant has immediately withdrawn the recording of the hearing in which the

voice of the victim at the request of the AEPD, without prejudice to which the information

it is still available and is still supplied in its full range. This puts

manifest that in order to provide this specific information it was not necessary, in the

terms of art. 5.1.c) of the GDPR to disseminate the voice of the victim." (underlining is

our).

While Fundamental of Law VIII of the initiation agreement states that "Of

In accordance with the evidence available, it is considered that the party

claimed has processed data that was excessive as it was not necessary for the purpose

for which they were treated." (underlining is ours).

In short, the initial agreement already indicated that the publication of the voice of the

undistorted victim is excessive data processing, that the

principle of minimization, since such a publication is neither adequate, nor pertinent, nor

limited to what is necessary for the informational purpose. In fact, the verbatim of the article

above unites with the conjunction "and" the three elements of adequacy, relevance and

limitation to what is necessary.

The interpretation of the triple content of article 5.1.c) made by the claimed party

with the aim that the initiation agreement be completed and given a new period of

allegations is no less an attempt to unduly delay the procedure that

cannot be estimated, since the initiation agreement had already indicated, in

concisely, that the disciplinary procedure was initiated for an alleged

infringement of article 5.1.c) of the GDPR, for which reason defenselessness has not been caused

material to the claimed party.

VIII

The claimed party considers that an incomplete treatment of the

principle of guilt, based on the denial that it is possible to identify the

victim and in which the guilt "would derive, where appropriate, from having weighed in a

erroneous and inexcusable freedom of information and the right to data protection".

Since in Fundamentals of Law III it has been indicated that the voice of any

person is personal data and identifies or makes it uniquely identifiable,

we have to focus at this point on the allegation that the guilt

derives, as indicated by the defendant, from having erroneously considered and

inexcusable freedom of information and the right to data protection, which

excludes the possibility that he had acted with intent or negligence.

In this regard, it should be remembered that jurisprudence repeatedly considers that

from the culpable element it can be deduced “...that the action or omission, classified as

administratively sanctionable infraction, must be, in any case, attributable to its

author, due to intent or negligence, negligence or inexcusable ignorance” (STS of 16 and 22

April 1991). The same Court pointed out that "it is not enough... for the exculpation

in the face of typically unlawful behavior, the invocation of the absence of

guilt" but it is necessary to prove "that the diligence that was required

by those who claim its non-existence” (STS, January 23, 1998). Assuming

examined, the respondent party has not proved that it used the slightest

diligence.

Connected with the degree of diligence that the data controller is obliged to

to deploy in compliance with the obligations imposed by the regulations of

data protection, you can cite the Judgment of the National Court of 17

October 2007 (rec. 63/2006), which indicates, in relation to entities whose activity

involves continuous processing of customer data, which: "(...) the Court

Supreme Court has understood that there is imprudence whenever a

legal duty of care, that is, when the offender does not behave with due diligence



callable. And in assessing the degree of diligence, special consideration must be given to the

professionalism or not of the subject, and there is no doubt that, in the case now examined,

when the activity of the appellant is constant and abundant handling of data from

personal character must be insisted on the rigor and exquisite care to adjust to the

legal provisions in this regard.

In the present case, the claimed party has not acted with the required diligence, in

In this case, that of a professional who carries out continuous processing of personal data.

personal, since the media are responsible for data processing

of a personal nature that habitually distort the voice in order to

that the person speaking is not recognized. For this reason, the initial agreement in its

Basis of Law IX indicates that the claimed party "was negligent in not

ensure a procedure that guarantees the protection of personal data in

such sensitive circumstances", since we are referring to a woman from (...)

victim of a violent crime and against sexual integrity, putting her at risk

certain of being identified by people who were unaware of her status as a victim,

risk that should have been assessed by the media and of which it is

responsible.

Victims of sexual assaults, such as gang rape, have to face

the challenge of resuming his life once the trial is over, trying to overcome the

physical and psychological sequelae derived from the traumatic experience they have suffered.

In this sense, your environment plays a decisive role. Unfortunately, even today

produce situations in which they are stigmatized despite having been the

victims, sometimes even being forced to change their place of residence.

For this reason, it is essential to treat with the greatest care any personal data that

allows you to reveal your identity, prevent you from being recognized as a victim in your environment,

understood in a broad sense. Here the medium plays a decisive role.

communication

and, especially, the weighting or weighing that it has to carry out on a

prior to the publication of the information, which, in the present case, we are not aware of.

IX

Finally, the claimed party indicates that there is no motivation in the graduation of the proposed sanction, considering that "it was appropriate that he had indicated the amount of the sanction proposed without such aggravating factors, as well as the impact on it of each of they". Likewise, it understands that the amount of the sanction is excessive "given the characteristics of the imputed conduct and the subjective relationship of EPC with it", for which reason it requests its reduction.

The initial agreement established that "the sanction that could correspond would be €50,000 (fifty thousand euros), without prejudice to what results from the instruction".

For its part, article 83.5.a) of the GDPR, under the heading "General conditions for the imposition of administrative fines" provides that "Violations of the following provisions will be sanctioned, in accordance with section 2, with fines administrative costs of a maximum of EUR 20,000,000 or, in the case of a company, of



an amount equal to a maximum of 4% of the total annual turnover of the previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent in accordance with articles 5, 6, 7 and 9;"

Therefore, an administrative fine of 50,000 euros is in the lower section of the possible sanctions, thus complying with the provisions of article 83.1 of the GDPR: "Each control authority will guarantee that the imposition of fines administrative proceedings under this article for violations of this

Regulations indicated in sections 4, 5 and 6 are in each individual case,

effective, proportionate and dissuasive."

On the other hand, the defendant also alleges that the proposed sanction is not

duly motivated because "it was appropriate that he had indicated the amount of the sanction

proposal without such aggravating factors, as well as the impact on it of each one of them".

Article 83.2 of the GDPR states that "administrative fines will be imposed, in

depending on the circumstances of each individual case, in addition to or in lieu of

the measures referred to in article 58, paragraph 2, letters a) to h) and j). When deciding the

imposition of an administrative fine and its amount in each individual case will be

due account:" (emphasis added). That is, it provides for the valuation of the

penalty as a whole, taking into account each and every one of the circumstances

concurrent in the specific case and that are provided for in the aforementioned

precept.

The jurisprudence pronounces itself along the same lines when it refers to the principle of

proportionality, "fundamental principle that beats and presides over the graduation process

of sanctions and implies, in legal terms, "its adequacy to the seriousness of the

fact constituting the infringement" as provided in article 29.3 of Law 40/2015,

of the Legal Regime of the Public Sector, given that any sanction must be determined in

consistency with the entity of the offense committed and according to a criterion of

proportionality in relation to the circumstances of the fact." (Sentences of the

Supreme Court of December 3, 2008 (rec. 6602/2004) and April 12, 2012

(rec. 5149/2009) and Judgment of the National Court of May 5, 2021 (rec.

1437/2020), among others).

Thus, the Judgment of the Third Chamber of the Supreme Court, dated May 27,

2003 (rec. 3725/1999), indicates that "Proportionality, pertaining specifically to

to the scope of the sanction, constitutes one of the principles that govern the Law

Sanctioning administrative, and represents an instrument of control of the exercise of the disciplinary power by the Administration within, even, the margins that, in principle, indicates the applicable rule for such exercise. It is certainly a concept difficult to determine a priori, but which tends to adjust the sanction, by establishing its specific graduation within the indicated possible margins, to the severity of the fact constituting the infringement, both in its aspect of illegality and of the guilt, weighing as a whole the objective and subjective circumstances that they integrate the budget of punishable fact (…)"



We can also cite for this purpose the Supreme Court Judgment 713/2019, of 29 of May (rec. 1857/2018): "We will begin by pointing out that the proportionality of the sanctions implies that they come tempered to the particular gravity of the fact in conjunction with the circumstances of a subjective nature (which refer to the offender) and objective (which refer to the typical fact) being that in the field of law administrative sanction in general and in the field of the stock market in In particular, there are no dosimetry criteria similar to those included in the article 66 of the CP and that the modifying circumstances differ from those of the scope penal. Let us remember that there is no room for automatic application, without any qualification of the guiding principles of criminal law to the sanctioning administrative procedure (S.TS 6-10-2003 Rec.772/1998)."

For this reason, Directives 04/2022 of the European Committee for Data Protection on the calculation of administrative fines in accordance with the RGPD, in its version of 12

May 2022, submitted to public consultation, indicate that "As regards the

evaluation of these elements, increases or decreases in a fine do not

They can be previously determined through tables or percentages. It is reiterated that the

The actual quantification of the fine will depend on all the elements collected during the

research and other considerations also related to the experiences

of the supervisory authority regarding fines."

In short, since in the agreement to initiate this proceeding

disciplinary measure, the circumstances that took place were duly indicated and explained.

into account for the provisional quantification of the penalty as a whole, it is

duly motivated.

For all the foregoing, all the allegations made by the party are dismissed.

claimed to the initiation agreement.

X

The voice of a person, according to article 4.1 of the GDPR, is personal data

make it identifiable, and its protection, therefore, is the subject of said GDPR:

"Personal data": any information about an identified natural person or

identifiable ("the data subject"); An identifiable natural person shall be considered any person

whose identity can be determined, directly or indirectly, in particular by means of

an identifier, such as a name, an identification number, data of

location, an online identifier or one or more elements of identity

physical, physiological, genetic, mental, economic, cultural or social of said person;"

The voice is a personal and individual attribute of each physical person that is defined

for its height, intensity and timbre. Endowed with unique and singular distinctive features that

individualize it directly, associating it with a specific individual, it is molded

when speaking, being able to know, through it, the age, sex, state of health of the

individual, his way of being, his culture, his origin, his hormonal, emotional and

psychic. Elements of the expression, the idiolect or the intonation, are also data of

personal character considered together with the voice.



For this reason, report 139/2017 of the Legal Office of this Agency states that "the

image, as well as the voice of a person is personal data, as will be

any information that makes it possible to determine, directly or indirectly, your identity

(…)"

In fact, the National Court Judgment dated March 19, 2014 (rec.

176/2012) says that "the voice of a person constitutes data of a personal nature, as

as can be deduced from the definition offered by article 3.a) of the LOPD,

as

<<any information concerning natural persons identified or

identifiable>>, an issue that is not controversial."

Article 4.2 of the GDPR defines "processing" as: "any operation or set of

of operations carried out on personal data or sets of personal data,

whether by automated procedures or not, such as the collection, registration,

organization, structuring, conservation, adaptation or modification, extraction,

consultation, use, communication by transmission, diffusion or any other form of

authorization of access, collation or interconnection, limitation, deletion or destruction."

The inclusion of a person's voice in journalistic publications, which identifies or

makes a person identifiable, implies a processing of personal data and, therefore,

Therefore, the person responsible for the treatment that carries out the same is obliged to comply with

the obligations for the data controller set forth in the GDPR and in

the LOPDGDD.

eleventh

This procedure was initiated because the claimed party published, on the website

referred to in the facts, the audio of the statement before the judge of a victim of a

multiple rape, to illustrate the news regarding the holding of the trial in a case

that was very mediatic. The victim's voice was clearly appreciated when recounting

with all the crudeness of details the multiple rape suffered. All this constitutes a

processing of personal data of the victim.

People have the power of disposal over their personal data, including

his voice, as well as its diffusion, resulting, without a doubt, deserving of

protection of the person whose personal data is disclosed in violation of the law

legal.

Thus, STC 292/2000, of November 30, provides that "the content of the right

Fundamental to data protection consists of a power of disposal and control

on personal data that empowers the person to decide which of those data

provide to a third party, be it the State or an individual, or which can this third party

collect, and which also allows the individual to know who owns that personal data

and for what, being able to oppose that possession or use. These powers of disposition and

control over personal data, which constitute part of the content of the right

fundamental to data protection are legally specified in the power to

consent to the collection, obtaining and access to personal data, its subsequent

storage and treatment, as well as its use or possible uses, by a third party, be it the

state or an individual. And that right to consent to knowledge and treatment,

computerized or not, of personal data, requires as complements

essential, on the one hand, the ability to know at all times who has

these personal data and to what use you are submitting them, and, on the other hand, the power

oppose such possession and uses".

In this sense, and regardless of the legal basis legitimizing the

treatment, all controllers must respect the principles of

treatment included in article 5 of the GDPR. We will highlight article 5.1.c) of the

GDPR which establishes that:

"1. 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");"

However, we are faced with a fundamental right that is not absolute,

since, if necessary, the Fundamental Right to Data Protection can

give in to the prevalence of other rights and freedoms also constitutionally

recognized and protected, such as, for example, the Fundamental Right to Freedom of

Information, weighing it on a case-by-case basis.

However, in the present case, as we will explain, it must be considered that the

treatment carried out by the claimed party within the framework of the freedom of

information has been excessive, as there is no prevailing public interest in information in

the dissemination of the voice of the victim - without adding any added value to the information

keeping the real voice of the victim (without distorting, for example)-, under whose pretext

it seems that those data have been disclosed; voice that, added to the fact that it is

a highly publicized case, makes the victim clearly identifiable. By pondering the

conflicting interests and, considering the concurrent circumstances of this case,

that is, the especially sensitive nature of personal data and the intense

violation of the privacy of the victim deserves greater protection the interest of the owner

of the right to the protection of your personal data and that they are not disclosed in front of the

claimed public interest in its dissemination.

twelfth

In the struggle between the Fundamental Rights to Freedom of Information in

relation to the Fundamental Right to the Protection of Personal Data, even

when an equal degree of protection is recognized for both constitutional rights,

ordinarily the first is usually endowed with prevalence by our courts, after

assess and weigh all the elements at stake.

However, preponderance does not mean prevalence when, after all the

concurrent circumstances in a specific case, the limits set are exceeded

normatively and jurisprudentially.

In this sense, the Article 29 Working Group in its Opinion 06/2014 on the

concept of legitimate interest of the data controller under the

Article 7 of Directive 95/46/EC, when examining the legal basis of the legitimate interest of the

Article 7.1.f) of Directive 95/46/CE, fully transferable to the current art. 6.1.f) of



GDPR, includes the right to freedom of expression or information as one of the

cases in which the question of legitimate interest may arise, stating that "without

regardless of whether the interests of the data controller will ultimately prevail

term on the interests and rights of the interested parties when the

weighing test".

XIII

That said, the Fundamental Right to Freedom of Information is not

absolute. We can observe very clear limits established by the courts in the

civil sphere, in relation to the Right to Honor, to Personal and Family Privacy and to

the Image itself.

Thus, we will cite, for all, STC 27/2020, of February 24 (amparo appeal 1369-

2017) that it has, in relation to the image of a person, and based on the fact

uncontroversial that it makes it identifiable, that "…the debated question is reduced to

consider whether the non-consensual reproduction of the image of an anonymous person is

that is, of someone who is not a public figure, but who suddenly and

involuntarily a role in the newsworthy event, in this case as a victim of

failed attempted murder by his brother and his subsequent suicide,

implied an illegitimate interference in their fundamental right to their own image (art.

18.1 CE).

[…]

…that criminal events are newsworthy events, even with

regardless of the character of private subject of the person affected by the news. Without

However, the limit is in the individualization, direct or indirect, of the victim, since

This data is not of public interest because it lacks relevance for the information

that is allowed to be transmitted (SSTC 20/1992, of February 20; 219/1992, of

December; 232/1993, of July 12; 52/2002, of February 25; 121/2002, of 20

May, and 127/2003, of June 30). Thus, it is currently recognized by Law 4/2015, of 27

April, of the crime victim statute, in force since October 28, 2015,

when he warns of the need "from the public authorities [to offer] a

response as broad as possible, not only legal but also social, to the victims,

not only repairing the damage in the framework of a criminal proceeding, but also

minimizing other traumatic effects on the moral that his condition can

generate, all this regardless of their procedural situation. Therefore, the present

Statute, in line with European regulations on the matter and with the demands that

raises our society, claims, based on the recognition of the dignity of

victims, the defense of their material and moral assets and, with it, those of the group of

the society". In cases such as those raised in this appeal, this Court must

give relevance to the prevalence of the right to the image of the victim of the crime

against information freedoms, since graphic information became idle or

superfluous because the photograph of the victim lacks real interest for the transmission of

the information, in this case the apparent accomplishment of a homicide and subsequent

suicide" (emphasis added).

We will add the STS, from its First Civil Chamber, 272/2011, of April 11 (rec.

1747/2008), in which, regarding the data necessary to provide a



information and limits to the public interest states that "b) Trivial information is not

protects (ATC 75/2006), but the fact of providing unnecessary data in a case of

rape (full name, last name initials, street portal where

the victim lived) that have no community relevance, do not respect the reservation, only

seek to satisfy curiosity, produce disturbances or annoyances, and reveal

aspects of personal and private life unnecessarily, allowing neighbors,

close people and relatives full identification of the victim and knowledge

in great detail about an act that seriously violated his dignity (STC

185/2002) or about a disease that has no public interest and affects

direct to the irreducible field of intimacy and that reveals itself to the effect of a pure

joke or joke (STC 232/1993);".

Likewise, the STS, of its First Civil Chamber, 661/2016, of November 10 (rec.

3318/2014), in relation to the capture and dissemination in court of the image of a

victim of gender violence provided that "1.) The interest of the

disputed information or the right of the defendant television station to broadcast

images recorded during the act of the oral trial of the criminal case, since there is no record

no limitation in this regard agreed by the judicial body.

2nd) The only controversial point is, therefore, whether the applicant's identification

as a victim of the crimes prosecuted in said criminal case, through first

plans of his face and the mention of 03/31/2022 his first name and place of residence

residence, was also included in the fundamental right of the chain of

demanded television to transmit truthful information or, on the contrary, was left

limited by the plaintiff's fundamental rights to personal privacy and

your own image.

3rd) Regarding this matter, the jurisprudence has recognized the general interest and the

public relevance of information on criminal cases (judgment 547/2011, of 20

July), which are accentuated in cases of physical and psychological abuse (judgments

128/2011, of March 1, and 547/2011, of July 20), but it has also pointed out,

regarding the identification of the persons involved in the trial, that the

defendant and the victim are not on an equal footing, because in terms of

that one does allow a complete identification, and not only by its initials, due to the

nature and social significance of the crimes of mistreatment (judgment 547/2011,

of July 20).

[…]

6th) In short, the defendant television channel should have acted with the prudence of the

diligent professional and avoid issuing images that represented the

recurring in close-up, either refraining from issuing the corresponding shots,

well using technical procedures to blur their features and prevent their

recognition (judgment 311/2013, of May 8). Similarly, it should also

avoid mentioning your first name, because this information, insufficient by itself to

constitute illegitimate interference, became relevant when pronounced on the screen

simultaneously with the image of the applicant and add the mention of her

town of residence, data all of them unnecessary for the essence of the content

information, as evidenced by the news about the same trial published in the

next day in other media. 7th) The identification of the plaintiff through his



image and personal data indicated and its direct link to an episode of

gender violence and other serious crimes, when disclosure was foreseeable

Simultaneous or subsequent data referring to how the victim and her aggressor met

and the way in which the criminal acts occurred, supposes that the loss of the

anonymity would violate both the plaintiff's right to her own image, by the

broadcast of their physical features, such as their personal and family intimacy, to the extent that

that some reserved data, belonging to his private life (who went to the Internet

to start a relationship or the intimate content of some of their talks), lacking

offensive entity in a situation of anonymity, they began to have it from the moment

in which any person who watched those news programs and who resided in the

location of the victim could know who they were referring to, so that the damage

psychological damage inherent to his condition as a victim of crimes was added to the moral damage

consisting of the disclosure of information about his private life that he had not consented to

make public." (underlining is ours).

As we can see, a clear reference is made to the excessive treatment of

personal data (some of which are not of an intimate nature) to provide the

information, considering them unnecessary at all points in attention to the

concurrent circumstances. Sometimes the courts refer to intimate data,

but sometimes it is personal data that is not intimate, such as, for

For example, the image of a natural person obtained from a photograph published in a

social network or name and surname.

fourteenth

In the specific case examined, as we have indicated, the claimed party

published, on the website referred to in the facts, the audio of the statement before the judge

of a victim of a multiple rape, to illustrate the news of a very

media.

Thus, it is not a question, as in other cases examined by jurisprudence, of endowing

of prevalence to a fundamental right over another, having to choose which one has more

weight in a specific case. If not, rather, to find a balance between

both to achieve the achievement of the purpose of the first without undermining the second.

The reconciliation of both rights is nothing new, since the legislator

European Union mandates such reconciliation in article 85 of the GDPR.

As we have seen previously, the Fundamental Right to Freedom of

Information is not unlimited, since the jurisprudential interpretation when confronting it

with other rights and freedoms does not allow the same in any case and with all breadth,

but, nevertheless, the prevalence that the courts usually endow it can be seen

limited by other fundamental rights that must also be respected. Thus

observes its limitation when the personal data provided was unnecessary for the

essence of the information content.

We must consider the special circumstances present in the supposed

examined. It is about a woman (...) who has suffered a multiple rape. In the

published recording, she is heard recounting, with great emotional charge, the aggression

sexuality suffered in all crudeness, narrating (...).



In addition, we cannot lose sight of the victim status of the woman whose voice, with

all the nuances exposed, has spread.

Let us remember, for merely illustrative purposes, that Law 4/2015, of April 27,

of the Statute of the victim of the crime foresees a special need of protection to the

victims of crimes against sexual freedom or indemnity, as well as

victims of violent crimes, both circumstances that concur in the alleged

examined.

In this case, the situation of the victim must be considered (who is not in the

same level of equality as the defendants) and what the diffusion of their voice with

all its nuances, as well as the special protection that the

legal system that, without constraining the supply of information, must be done

compatible with the principle of data minimization, applicable to the form, the

medium in which the information is supplied and disseminated due to the immediate affectation of the data personnel and the identification of the victim.

Precisely because the obvious informative public interest in the news is not denied, Given the general interest in criminal cases, in this specific case, it is not a question of to diminish the Fundamental Right to Freedom of Information due to the prevalence of the Fundamental Right to the Protection of Personal Data, but of make them fully compatible so that both are absolutely guaranteed. That is, the freedom of information of the media is not questioned. of communication but the weighting with the right to data protection based on to the proportionality and need to publish the specific personal data of the voice. Such situation could have been resolved with the use of technical procedures to prevent voice recognition, such as, for example, distortion of the voice of the victim or the transcript of the report of the multiple rape, security measures both, applied depending on the case in an ordinary way by means of communication.

At older we have to mean that the victim is an anonymous person and our Constitutional Court, for all the STC 58/2018, of June 4, affirms that the public authorities, public officials and public figures or those dedicated to activities that carry public notoriety “voluntarily accept the risk of that their subjective personality rights are affected by criticism, opinions or adverse disclosures and, therefore, the right to information reaches, in relation to with them, its maximum level of legitimizing effectiveness, insofar as their life and conduct morality participate in the general interest with a greater intensity than that of those private persons who, without a vocation for public projection, see themselves circumstantially involved in matters of public importance, to which Therefore, a higher level of privacy must be recognized, which prevents

granting general importance to facts or behaviors that would have it if they were referred to

to public figures".

The STJUE (Second Chamber) of February 14, 2019, in case C 345/17, Sergejs

Buivids, mentions various criteria to ponder between the right to respect

of privacy and the right to freedom of expression, among which are

“the contribution to a debate of general interest, the notoriety of the affected person,

the object of the report, the previous behavior of the interested party, the content, the



form and the repercussions of the publication, the form and the circumstances in which it is

obtained information and its veracity (see, in this regard, the judgment of the ECtHR of

June 27, 2017, Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland,

CE:ECHR:2017:0627JUD000093113, section 165)”.

In such a way that for a matter to be considered of general interest,

public relevance, they will be not only for the person who intervenes, but also for the

matter to which it refers. Both requirements must concur, resulting, at greater

abundance of what was meant in the previous section, that in the case examined

the victim is not a public person; rather the contrary, it is of great interest that

is recognized by third parties, so it may entail a new penalty

to the already suffered The victim is an anonymous person and must remain so, in such a way that

so that their fundamental rights are fully guaranteed.

In the present case, (i) we are not dealing with a figure of public relevance, in which

sense that such relevance is sufficient to understand that it supposes, ex lege, a

dispossession of your fundamental right to the protection of your personal data, and (ii) although we are dealing with facts "of public relevance", in the sense that they are revealed as "necessary" for the presentation of ideas or opinions of public interest, that necessity does not reach the provision of data that identifies the victim.

For this reason, and as expressed by the Supreme Court in its (civil) judgment 697/2019, of 19 December, the formation of a free public opinion does not require, nor does it justify, the affects the fundamental right to one's own image [in this case to the protection of personal data] with that seriousness and in a way that does not save the necessary connection with the identification of the person object of the information.

fifteenth

Every person responsible for the treatment has conferred obligations in terms of data protection, in the terms prescribed in the GDPR and in the LOPDGDD, being able to highlight, in terms of what interests us, proactive responsibility, Article 5.2 of the GDPR, risk assessment and implementation of measures of adequate security. Obligations that are even more relevant when, as in In the case we are examining, this one is especially sensitive.

Such obligations do not decline because we are before a data controller that it is a means of communication.

If we add the diffusion of the victim's voice (with all its nuances), which makes it identifiable and can be recognized by third parties, with the factual account that makes in relation to the violation suffered, there is a very high and very likely risk that may suffer damage to their rights and freedoms. This has happened in other cases of dissemination of personal data of victims of rape crimes. And this, in addition to that with the diffusion of the voice of the victim she is being sentenced again to can be recognized by third parties, when it is not a proportional treatment or necessary in relation to the information purposes pursued.

It is tremendously significant that, in the case examined, the part

The defendant has immediately withdrawn the recording of the hearing in which the



voice of the victim at the request of the AEPD, without prejudice to which the information

it is still available and is still supplied in its full range. This puts

manifest that in order to provide this specific information it was not necessary, in the

terms of art. 5.1.c) of the GDPR to disseminate the voice of the victim.

16th

Based on the available evidence, it is considered that the party

claimed has processed data that was excessive as it was not necessary for the purpose

for which they were treated.

The known facts could constitute an infringement, attributable to the party

claimed, of article 5.1.c) of the GDPR, with the scope expressed in the

Previous legal grounds, which, if confirmed, could mean the

commission of the offense typified in article 83.5, section a) of the GDPR, which under

the heading "General conditions for the imposition of administrative fines"

provides that:

Violations of the following provisions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of maximum EUR 20,000,000 or,

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

total annual global business volume of the previous financial year, opting for

the highest amount:

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

consent in accordance with articles 5, 6, 7 and 9;”

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute

offenses the acts and behaviors referred to in sections 4, 5 and 6 of the

Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the

present organic law”.

For the purposes of the limitation period, article 72 of the LOPDGDD indicates:

Article 72. Offenses considered very serious.

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679,

are considered very serious and will prescribe after three years the infractions that

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data in violation of the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.”

seventeenth

In order to determine the administrative fine to be imposed, the

provisions of articles 83.1 and 83.2 of the GDPR, precepts that state:

"Each control authority will guarantee that the imposition of administrative fines



under this Article for infringements of this Regulation

indicated in sections 4, 5 and 6 are effective in each individual case,

proportionate and dissuasive.”

"Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature

nature, scope or purpose of the processing operation in question as well as the number

number of interested parties affected and the level of damages they have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the person in charge or in charge of the treatment to

settle the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, habi-

gives an account of the technical or organizational measures that have been applied by virtue of the

articles 25 and 32;

e) any previous infringement committed by the controller or processor;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered

previously against the person in charge or the person in charge in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to mechanisms of

certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement.”

Regarding section k) of article 83.2 of the GDPR, the LOPDGDD, article 76,

"Sanctions and corrective measures", provides:

"2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:



a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of data processing.

personal information.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have led to the commission

of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the

violation, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate.

h) Submission by the person responsible or in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which

there are controversies between those and any interested party.”

In this case, the following graduation criteria are considered concurrent:

 Aggravating:

- Article 83.2.a) of the GDPR:

Nature, seriousness and duration of the infringement: It is considered that the nature of the infraction is very serious since it entails a loss of disposition and control over personal data to a person who has been the victim of a violent crime and against sexual integrity and that by disseminating her personal data she is condemned again to be recognized by third parties, causing serious damages.

- Article 83.2.b) of the GDPR.

Intentional or negligent infringement: Although it is considered that there was no intentionality on the part of the communication medium, it is concluded that it was negligent by not ensuring a procedure that guarantees the protection of personal data in such sensitive circumstances, especially when on many occasions distorts the voice in the news so that the person is not recognized talking.

- Article 83.2.g) of the GDPR.

Categories of personal data affected by the infringement: The certain possibility of recognize the victim of a crime as the one reporting the news, very serious, violent and against sexual integrity (multiple rape), is seriously detrimental to the affected, since what happened is linked to their sexual life.



The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of article 5.1 c) of the GDPR, it allows setting a fine of 50,000 € (fifty thousand euros).

In view of the foregoing, the following is issued

PROPOSED RESOLUTION

That the Director of the Spanish Agency for Data Protection sanctions

EDITORIAL PRENSA CANARIA, S.A., with NIF A35002278, for a violation of the

Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR, with a fine of

€50,000 (fifty thousand euros).

That the Director of the Spanish Data Protection Agency confirm the

following provisional measures imposed on EDITORIAL PRENSA CANARIA, S.A.:

- Withdrawal or distortion of the victim's voice from their web addresses, avoiding, in the

to the extent that the state of technology allows it, the re-uploading or re-uploading of copies

or exact replicas by the same or other users.

- Withdrawal or modification of the contents in such a way that it makes it impossible to access them and

disposition of the original by third parties, but guarantees its preservation, for the purposes of

guard the evidence that may be necessary in the course of the investigation

police or administrative or judicial process that may be investigated.

Likewise, in accordance with the provisions of article 85.2 of the LPACAP, you will be

informs that it may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which

It will mean a reduction of 20% of the amount of the same. With the application of this

reduction, the sanction would be established at €40,000 (forty thousand euros) and its payment

will imply the termination of the procedure. The effectiveness of this reduction will be

conditioned to the withdrawal or resignation of any action or appeal via

administrative against the sanction.

In case you choose to proceed to the voluntary payment of the specified amount

above, in accordance with the provisions of the aforementioned article 85.2, you must do it

effective by depositing it in the restricted account no. ES00 0000 0000 0000 0000

0000 open in the name of the Spanish Data Protection Agency in the entity

bank CAIXABANK, S.A., indicating in the concept the reference number of the

procedure that appears in the heading of this document and the cause, for

voluntary payment, reduction of the amount of the sanction. You must also send the

Proof of admission to the Sub-Directorate General of Inspection to proceed to close

The file.

By virtue of this, you are notified of the foregoing, and the procedure is revealed.

so that within TEN DAYS you can allege whatever you consider in your defense and



present the documents and information that it deems pertinent, in accordance with

Article 89.2 of the LPACAP.

B.B.B.

INSPECTOR/INSTRUCTOR

926-050522

EXHIBIT

***DATE.1 Claim of D.A.A.A.

***DATE.2 Claim of D.A.A.A.

*** DATE.3 Admission for processing

***DATE.3 Urgent withdrawal order to EDITORIAL PRENSA CANARIA, S.A.

***DATE.5 Communication from EDITORIAL PRENSA CANARIA, S.A.

01-24-2022 Report on previous actions

04-29-2022 Agreement to initiate a disciplinary file against EDITORIAL PRENSA

CANARIA, S.A.

05-04-2022 Information to D.A.A.A.

05-18-2022 Allegations of EDITORIAL PRENSA CANARIA, S.A. as well as request

of a copy of the file and extension of the term

05-19-2022 Submission of a copy of the file and extension of the term to EDITORIAL

CANARY PRESS, S.A.

>>

SECOND: On October 11, 2022, the claimed party has proceeded to pay

of the sanction in the amount of 40,000 euros making use of the reduction provided for in

the motion for a resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource in the

against the sanction, in relation to the facts referred to in the

resolution proposal.

FUNDAMENTALS OF LAW



Yo

Competence

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

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

control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the

Organic Law 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 Protection Agency

of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature but the

inadmissibility of the second, the voluntary payment by the presumed perpetrator, in

any moment prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or resource against the sanction.

The percentage reduction provided for in this section may be increased

according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure PS/00195/2022, in

in accordance with the provisions of article 85 of the LPACAP.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es



SECOND: NOTIFY this resolution to EDITORIAL PRENSA CANARIA,

S.A.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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 for in article 46.1 of the

referred Law.

Mar Spain Marti

Director of the Spanish Data Protection Agency

968-171022

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es