

□ File No.: PS/00547/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the complaining party) dated October 21, 2020
filed a claim with the Spanish Data Protection Agency.

The claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the part
claimed), as the owner of the different IP of the website ***URL.1, whose
content is, among others, about contacts, rooms, webcam or massages
erotic, in which the claimant's telephone number has been published.

The claimant requested the removal of her data on said web page, but days later
his phone number reappeared, and upon contacting the
website, the response was as follows:

"We have deleted the ads that you indicated, in addition to blocking the phone as
form of contact, but it is possible that if the advertiser has certain knowledge
computers bypass the filters.

To get to the bottom of the problem, we recommend that you report the advertiser to the
police providing the reference or telephone number of the ad, as well as our email

Email: ***EMAIL.1.

We have data that helps identify the advertiser, but due to the protection law

We can only provide this data to the police or a judge.

If you report the advertiser and the police contact us,

We will collaborate as much as we can.

Thank you very much for the warning."

Therefore, since the stated problem was not resolved, the claimant has continued receiving unwanted calls.

Attached to the complaint are screenshots showing some of the advertisements published on the website ***URL.1, the result of a search on said website by the mobile number of the claimant and two other screenshots where the emails are seen response sent by the person responsible for the portal.

SECOND: On December 15, 2020, the Director of the Spanish Agency of Data Protection agreed to admit for processing the claim presented by the party claimant.

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THIRD: The General Subdirectorate for 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 RGPD), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following ends:

On April 20, 2021 MUBA ONLINE S.L. sends this Agency the following information and manifestations:

1. That due to the high volume of ads and users, they cannot check the veracity of the data inserted by the advertisers.
2. That the data of the published advertisements associated with the mobile number of the

claimant are, among others:

XXXXXXXXXX

Name: C.C.C.

Email: ***EMAIL.2

Phone: ***PHONE.1

Published: 2020-09-05 16:21:49

IP: ***IP.1

Port: XXXXX

XXXXXXXXXX

Name: C.C.C.

Email: ***EMAIL.2

Phone: ***PHONE.1

Published: 2020-09-05 16:28:53

IP: ***IP.1

Port: XXXXX

XXXXXXXXXX

Name: Private flat

Email: ***EMAIL.3

Phone: ***PHONE.1

Published: 2020-09-10 19:19:22

IP: ***IP.1

Port: XXXXX

XXXXXXXXXX

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D.D.D. Age 28 years

Email: EMAIL.4

Phone: ***PHONE.1

Published: 2020-10-01 12:59:40

IP: ***IP.2

Port: XXXXX

XXXXXXXXXX

E.E.E.

Email: ***EMAIL.5

Phone: ***PHONE.1

Published: 2020-10-25 14:26:44

IP: ***IP.3

Port: XXXXX

On November 3, 2021 TELEFONICA DE ESPAÑA, S.A. refer to this

Agency the following information and statements:

That all the IPs on the dates and times specified correspond to the holder B.B.B..

On November 4, 2021, a request for information is sent to the

investigated by post and no reply has been received.

FOURTH: On November 29, 2021, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure 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 the Public Administrations (in

hereinafter, LPACAP), for the alleged infringement of article 6 of the RGPD, typified in the

article 83.5 of the RGPD.

FIFTH: Notification of the aforementioned initiation agreement, the claimed party, on January 14, 2022, presents a pleadings brief in which it states the following aspects:

- a) That the complainant contacted the accused so that she could favor the obtaining contacts of an intimate nature, requesting, among other things, that he give dissemination in the usual circles of the sector.
- b) That as a result of this, an announcement is published, with your consent, in the section of contacts from the website ***URL.1 adding a contact telephone number, provided by the complainant herself, as a professional telephone, indicated for these issues.
- c) That, at no time, and this is also clear from the actual account of events, requests the respondent to unsubscribe from the ad, so this part in mode

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Does anyone have proof that for his part he would have entrusted him to cancel the said announcement.

- d) That, instead of reliably addressing the defendant-claimed B.B.B., goes directly to the portal of contact ads, however, the complaint is directed without prior claim, reliable request or anything similar.

It is stated that at no time did the complainant indicate that the publication had been carried out without your consent, so there would be no violation of article 6.1 of the GDPR.

It also considers that, in this type of publication, the data provided is fictitious, or in any case, do not correspond to the real data of the people who offer their services on these contact pages, which is a way of separating the

private life of these circles, providing pseudonyms, emails

specific for these activities, as well as telephone numbers used

solely for these purposes, so that art could be applied by analogy

19.2 of the LOPDGDD, which establishes a presumption "a sensu contrario" in the

sense that will be presumed protected in article 6.1 f) the treatment of contact data

of individual entrepreneurs or liberal professionals.

On the other hand, it is stated that he is not aware that the claimant addressed the respondent

to request the withdrawal of the publication, therefore, if it is not accredited or the

illegitimate publication by the claimed party or failure to comply with the request for

cancellation of the advertisement on his part, he cannot be charged with any infraction commission

related to the personal data protection regulations.

SIXTH: On January 26, 2021, the instructor of the procedure agreed

practice evidence considering the claim reproduced for evidentiary purposes

filed by the claimant and her documentation, the documents obtained and

generated during the phase of admission to process of the claim, and the report of

previous investigative actions that are part of the procedure as well as the

allegations to the agreement to initiate the sanctioning procedure that concerns us,

presented by the claimed party, and the documentation that accompanies them.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

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FIRST: It is verified the existence of several advertisements published on the website

***URL.1 associated with the claimant's mobile phone number.

SECOND: The person in charge of the website ***URL.1 states that the data are provided are fictitious, or in any case, do not correspond to the real data of the people who offer their services on these contact pages, so will presume protected in article 6.1 f) the treatment of contact data of the individual entrepreneurs or liberal professionals.

The respondent also indicates that she is not aware that the claimant requested the removal of the post.

FOUNDATIONS OF LAW

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

II

The defendant is accused of committing an infraction for violation of article 6 of the RGPD, "Legality of the treatment", which indicates in its section 1 the assumptions in which that the processing of third party data is considered lawful:

"1. The treatment will only be lawful if at least one of the following is met conditions:

a) the interested party gave their consent for the processing of their personal data for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;

(...)"

The infringement is typified in article 83.5 of the RGPD, which considers as such:

"5. Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

The basic principles for the treatment, including the conditions for the

a)

consent under articles 5,6,7 and 9."

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements considered very serious" provides:

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"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned in it and, in particular, the following:

(...)

The processing of personal data without the concurrence of any of the conditions

a)

of legality of the treatment established in article 6 of Regulation (EU) 2016/679."

III

The documentation in the file offers evidence that the claimed, violated article 6.1 of the RGPD, since it processed the data of the claimant without having any legitimacy to do so.

The claimant requests that her data be deleted, indicating that she has never given her consent for your personal phone number to appear on the ***URL.1 website.

In relation to the cancellation request of the claimant, the person in charge of the page web responds to the complainant that it is not possible to avoid publishing her telephone number on said web page, nor can information be provided about who has proceeded to include your telephone number on said website, based on the regulations protection of personal data.

Specifically, it states the following:

"We have deleted the ads that you indicated, in addition to blocking the phone as form of contact, but it is possible that if the advertiser has certain knowledge computers bypass the filters.

To get to the bottom of the problem, we recommend that you report the advertiser to the police providing the reference or telephone number of the ad, as well as our email

Email: ***EMAIL.1

We have data that helps to identify the advertiser but by the law of protection of data we can only provide this data to the police or a judge.

If you report the advertiser and the police contact us,

We will collaborate as much as we can.

Thank you very much for the warning."

Therefore, it is Mrs. B.B.B., who must certify that she has obtained the consent of the claimant to use their personal data, and proceed to its publication on the aforementioned website, as established in article 7.1. of the GDPR.

Mrs. B.B.B., in a pleadings brief, states before this Agency that the

treatment of the data of the claimant object of this claim, you must
be considered as the processing of contact data of individual entrepreneurs

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that provide service to a legal person, so in accordance with article
19.1 of the LOPDGDD the processing of data would be protected by article 6.1 f)
of the RGPD, which regulates the legality of treatment for the satisfaction of interests
legitimate pursued by the data controller.

Thus, it is understood that if for the use of personal data, Mrs.

BBB must have the express consent of the owner of said data and

this has not been able to be accredited by her, it is understood that such consent has not
been granted by the claimant.

IV

The determination of the sanction to be imposed in this case requires
observe the provisions of articles 83.1 and 83.2 of the RGPD, precepts that,
respectively, provide the following:

“Each control authority will guarantee that the imposition of administrative fines
under this Article for infringements of this Regulation
indicated in sections 4, 9 and 6 are in each individual case effective,
proportionate and dissuasive.”

“Administrative fines will be imposed, depending on the circumstances of each
individual case, in addition to or as a substitute for the measures contemplated in the
Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

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

- a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question as well such as the number of interested parties affected and the level of damages that have suffered;
- b) intentionality or negligence in the infringement;
- c) any measure taken by the controller or processor to alleviate 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, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;
- e) any previous infringement committed by the person in charge or the person in charge of the treatment;
- 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 measure;

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- i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or 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.”

In order to specify the amount of the penalty to be imposed on the person claimed for violation of article 83.5.a) of the RGD, it is essential to examine and assess whether the circumstances described in article 83.2 of the RGD and if they intervene by mitigating or aggravating the responsibility of the responsible entity.

In accordance with the precepts transcribed, in order to set the amount of the sanction of fine to be imposed in the present case, the claimed party is considered as responsible for an infringement typified in article 83.5.a) of the RGD, in a initial assessment, the following factors are considered concurrent:

-

We are facing a negligent action, since it refers to data of a which allow the person to be identified by their mobile number as it is published, which is detrimental to their privacy (article 83.2 b).

This is why it is considered appropriate to adjust the sanction to be imposed on the person claimed and set it at the amount of €10,000 for the infringement of article 6 of the RGD.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., with NIF ***NIF.1, for an infraction of article 6 of the RGD, typified in article 83.5 of the RGD, a fine of €10,000 (ten thousand euros).

SECOND: NOTIFY this resolution to B.B.B..

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP), within the payment term voluntary established in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of December 17, through its entry, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

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Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment voluntary will be until the 20th day of the following month or immediately after, and if between the 16th and last day of each month, both inclusive, the payment term It will be until the 5th of the second following month or immediately after.

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

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

counting from the day following the notification of this resolution or directly
contentious-administrative appeal before the Contentious-Administrative Chamber of the
National Court, in accordance with the provisions of article 25 and section 5 of
the fourth additional provision of Law 29/1998, of July 13, regulating the
Contentious-administrative jurisdiction, within a period of two months from the
day following the notification of this act, as provided in article 46.1 of the
aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,
may provisionally suspend the firm resolution in administrative proceedings if the
The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by
writing addressed to the Spanish Agency for Data Protection, presenting it through
Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-
web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registers provided for in art. 16.4 of the
aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the
documentation proving the effective filing of the contentious appeal-
administrative. If the Agency was not aware of the filing of the appeal
contentious-administrative within a period of two months from the day following the
notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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