

□ Procedure No.: PS/00200/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The Associative Union of Valencia UNAE, with NIF G46421673, on behalf of and
representation of Ms. A.A.A. (hereinafter, the claimant) dated February 18,
2020 filed a claim with the Spanish Data Protection Agency. The
claim is directed against Ms. B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one).

The claimant states that on the website ***URL.1 (sexual dating page)
photos of people appear that do not correspond to the phone numbers of
their contact and that the claimant is being a direct victim of these facts.

The images with the contact numbers are still active in ***URL.1/CAT-
GIRLS that anyone can post an ad without there being any
personality verification control, via pin codes to the mobile entered to be
high.

In addition, the web contact form, located at ***URL.1/CONTACT, is a
false contact.

It requests that this web page be closed and that the telephone numbers be suppressed, in
specifically that of the claimant ***TELEPHONE.1.

And, among other things, it provides the following documentation:

Screenshot of the announcement at the url ***URL.1 where the name of the

□

“Katy”, a sexually oriented photograph and the claimant's phone number.

Copy of privacy policy located at

the url

□

***URL.1/PRIVACY_POLICY

pulled apart

"RECIPIENTS" that "The data will be communicated to the company *** COMPANY.1 with who ***URL.1 has contracted its virtual services,..."

where it appears in the

Copy of email sent by "***EMPRESA.1," on the 13th of

□

February 2020 at 12:06 p.m., which contains the following text:

"Dear Ladies and Gentlemen,

Further to your inquiry we would like to inform you that we have taken note of the circumstances as described by yourself and that we have taken the measures as requested. Please understand that for data protection reasons we are unable to give you any more information.

With kind regards from Berlin,

***COMPANY.1"

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Copy of email sent by A.A.A.@GMAIL.COM, dated 13

□

February 2020 at 1:13 p.m., which contains the following text:

"Dear Sir or Madam,

Thank you so much for your answer and for having taking actions quickly.

How can you enable this site to indicate again new phone numbers without a verification code? Can they do it again?

You have to alert the website that is not doing things right, they are doing illegal things and they need to create a verification code if they ask for a number or email to double check identity. The police in Spain will investigate them so they better stop doing this type of illegal procedures.

I remain at your disposal for any further information.

Thank you.

Kind regards,

A.A.A.”

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Copy of email containing the following text:

"Hello,

I continue seeing my phone number associated with the profile. Bottom- Left as shown in the image. You just have to situate the mouse where it says "CALL" and it appears.

When do you think this will be solved?

Thank you,

A.A.A.”

of

by

Copy

mail

forwarded

electronic

ABUSE-

□

SERVER@***EMPRESA.1.DE to A.A.A.@GMAIL.COM dated February 13,

2020 at 13:50:51 in which the following text appears:

“

Dear Ladies and Gentlemen,

the problems will be solved shortly, please be patient

With kind regards from Berlin,

***COMPANY.1”

Copy of certificate 940/20 of the General Directorate of the Police in which

□

The claimant appears, dated February 12, 2020, with the following

manifestations among others:

a)

That your telephone number is ***PHONE.1.

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b)

That on 02/11/2020 around 10:00 he received WhatsApp from a person to

the one you don't know with phone number ***TELEFONO.2 who wrote to her “Hello Katy

I have seen you in ***URL.1 and I would like to meet you”.

That the same day around 8:00 p.m. he receives a call from another person

c)

unknown with phone number ***TELEFONO.3.

That by entering the fake profile you can contact via WhatsApp or

d)

telephone with the claimant.

That in the fake profile where your phone appears you can see a person

and)

nude which she does not know, calling herself Katy.

F)

That the complainant tried to contact the customer service of the

web page, which apparently has an email that does not exist since it

they return the emails.

That the complainant states that she has never been registered in any

g)

this type of page.

Copy of certificate 1008/20, of the General Directorate of the Police in which

☐

The claimant appears, dated February 14, 2020, and performs the following

manifestations, among others:

a)

That the claimant contacts another telephone number of a

woman who appears on the website ***URL.1 to check if that number

corresponds to the person in the photo, stating that this number belongs to a

person who says his name is C.C.C., with a telephone number ***TELEFONO.4.

b)

That the claimant made a second call to another telephone number of

a woman who appears on the website ***URL.1 stating that this number

belongs to an 80-year-old woman who has neither given her consent nor has record of that web page.

SECOND: In accordance with the provisions of article 65.2 of the LOPDGDD, in

On March 9, 2020, the agreement for admission to processing of this document is signed. claim.

THIRD: In view of the facts denounced in the claim and the documents provided by the claimant and the facts and documents of which she has had knowledge of this Agency, the Subdirector General for Data Inspection proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

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As a result of the research actions carried out, it is found that the responsible for the treatment is the claimed one.

On 06/02/2020, it is verified with respect to the website ***URL.1:

That the person responsible for the website does not appear in the privacy policy.

On 06/03/2020, it is verified with respect to the website ***URL.1:

That the result of the query for the url ***URL.1 is a blank page.

On 06/16/2020, OVH HISPANO, S.L. sends this Agency the following

information and demonstrations:

That the person who has contracted the ***URL.1 service is B.B.B..

On March 30, 2021, the postal address of the

claimed.

On the above date, a request for information is sent to the respondent. The

notification is made by postal mail and appears with the status "wrong address" by

the postal service dated April 14, 2021.

On April 23, 2021, the Tax Agency Planning Service and

Institutional Relations sends this Agency information on the fiscal domicile of the

claimed, being different from the previous one.

On the same date, a request for information is sent to the respondent. The

notification is made by mail.

FOURTH: On May 10, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed, for the

alleged infringement of Article 6.1 of the RGPD, typified in Article 83.5.a) of the aforementioned

GDPR.

FIFTH: Having been notified of the agreement to initiate this procedure

sanctioning both through the postal service, and the bulletin board of the

BOE, on May 24 and June 14, 2021.

: Formal notification of the start agreement, the claim at the time of the

SIXTH

This resolution has not submitted a brief of arguments, so it is

application of what is stated in article 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations, which in its

section f) establishes that in the event of not making allegations within the stipulated period

on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts:

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FACTS

FIRST: It is stated that on the web ***URL.1 (sexual dating page)

photos of people appear that do not correspond to the phone numbers of their contact and that the claimant is being a direct victim of these facts.

The images with the contact numbers are still active in ***URL.1/CAT-

GIRLS that anyone can post an ad without there being any

personality verification control, via pin codes to the mobile entered to be high.

In addition, the web contact form, located at ***URL.1/CONTACT, is a false contact.

SECOND: It is noted in the ad screenshot at the url ***URL.1 that

contains the name of “Katy”, a photograph of a sexual nature and the telephone number of the claimant.

THIRD: On May 10, 2021, this sanctioning procedure was initiated by the infringement of article 6 of the RGPD, being notified. not having made allegations, the one claimed, to the initial agreement.

Yo

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

II

Article 6 of the RGPD, "Legality of the treatment", details in its section 1 the assumptions in which the processing of third party data is considered lawful:

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

- a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

(...)"

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The infraction for which the claimed entity is held responsible is typified in article 83 of the RGPD that, under the heading "General conditions for the imposition of administrative fines", states:

"5. Violations of the following provisions will be sanctioned, in accordance

with section 2, with administrative fines of a maximum of 20,000,000 Eur 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:

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

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

(...)

b) The processing of personal data without the concurrence of any of the conditions 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, due to lack of legitimacy in the treatment of the data of the the claimant's telephone number, associated with an image of another person and some unrelated quotes. consented, without having accredited that it has the legal authorization to do so.

Article 6.1 RGPD says that the treatment will be lawful if “a) the interested party gave your consent to the processing of your personal data for one or more purposes specific”.

It is clear that the defendant published an ad on a contact web portal, of a sexual nature, containing the claimant's telephone number, associated with an image

and to some non-consensual appointments, data processing of the claimant that I carry out without legitimacy for it.

Thus, it is estimated that the facts that are submitted to the assessment of this Agency are constitutive of an infringement of art. 6.1.

IV

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

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“Each control authority will guarantee that the imposition of fines administrative actions under this article for violations 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;

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.”

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

“Sanctions and corrective measures”, provides:

“two. 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 treatment of

personal information.

commission of the offence.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have induced the

e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection officer.

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h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party.”

In accordance with the precepts transcribed for the purpose of setting the amount of the sanction of a fine to be imposed on the defendant, as responsible for an infraction typified in article 83.5.a) of the RGPD, the following are considered concurrent factors:

-

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 they have suffered. suffered (art. 83.2 a).

-

The intentionality in the commission of the infraction (art. 83.2 b).

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

FIRST: IMPOSE Ms. B.B.B., with NIF ***NIF.1, for an infraction of Article 6.1 of the RGPD, typified in Article 83.5 of the RGPD, a fine of 2,000 euros (two a thousand euros).

SECOND: NOTIFY this resolution to Ms. B.B.B., with NIF ***NIF.1.

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 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 is between the 1st and 15th of each month, both inclusive, the term to carry out the voluntary payment will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the term of the payment will be until the 5th of the second following month or immediately after.

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

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

Against this resolution, which puts an end to the administrative procedure in accordance with art.

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

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before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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