

□ Procedure No.: PS/00160/2019

938-300320

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On 10/09/2018 it has entry in the Spanish Protection Agency  
of Data (AEPD) a document signed by the Lawyer of the Administration of Justice of  
Section 1 of the Social Chamber of the Superior Court of Justice of  
\*\*\* LOCATION.1 in which it states that, by virtue of what was agreed on that date, it sends  
to the AEPD "testimony of the order dated September 27, 2018 and of the  
individuals operating in these files, in case the action contemplated  
could constitute an administrative offense.

The Order of 09/27/2018, issued by the TSJ of \*\*\*LOCALIDAD.1, Section 1 of the  
Social Chamber, in the Procedure for the adoption of Precautionary Measures  
XXXX/XXXX, agreed to "Deduce testimony to the Spanish Agency for the Protection of  
Data of the individuals in folios 199 to 201, 202 to 204,210 and 259 to 261  
in case the action described in it by the person acting as  
representative of the plaintiff Union could constitute an illegal act of  
administrative character whose purification is the responsibility of said Public Entity".

In compliance with the aforementioned resolution, this Agency was notified of the  
following documents: The pages of the Precautionary Measures Procedure  
XXXX/XXXX related to the Precautionary Measures Act; to Order 37/2018 issued in the  
Process; to the Diligence extended on 07/18/2018 in the procedure in which  
The delivery to A.A.A., Lawyer of the plaintiff, of a copy of the

DVD of the hearing held on 07/11/2018 and those related to the brief presented before the cited Court by the Lawyer of the Regional Confederation of Madrid and Castilla La Stain of the CGT, through which he informed the Chamber that the plaintiff had published and broadcast on YouTube his intervention in the exercise of the right of defense of his principal at the hearing.

In the Order of 09/27/2018 issued by the 1st Section of the Labor Chamber of the Superior Court of Justice of \*\*\* LOCALITY.1 that agrees to deduce testimony to the AEPD, the following facts were recorded:

☐ That on 07/11/2018 the hearing of the Precautionary Measures incident took place promoted by the plaintiff Union, "STAP-Madrid", against the party defendant -CGT, Confederal Committee, the Territorial Confederation of Madrid, Castilla La Mancha and Extremadura of the CGT and the Commission Manager of the STAP-Madrid-, whose result is reflected in the Minutes of the hearing.

☐ That the precautionary measures requested were dismissed by Order of that same date, 07/11/2018. The car that was appealed for replacement

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by the plaintiff, the appeal being dismissed by Order dated 09/04/2018.

☐ That at the request of Ms. A.A.A. -who spoke on behalf of STAP-Madrid, was delivered on 07/18/2018 of a copy in DVD format of audiovisual recording of the hearing.

☐ That, subsequently, the Lawyer of the co-defendant -the Confederation

Territory of CGT of Madrid, Castilla La Mancha and Extremadura - put into knowledge of the Court that “it has been published and disseminated on the communication YouTube” part of the intervention of the Lawyer in the exercise of the right of defense of its principal through the edition and assembly of a video in which your physical image is shown without limitation and inserted written texts highlighting and decontextualizing their words and, therefore, the defense of their arguments, in order to intentionally seek a insane confrontation within the General Confederation of Labor.

□ That in order for the plaintiff to be able to make the allegations that she considered pertinent to this fact, the document was served on him by means of diligence of ordination dated 08/06/2018, without that party having procedure evacuated.

The Social Chamber of the TSJ of \*\*\*LOCALIDAD.1 invoked as Grounds for the decision to “deduce testimony” to the AEPD, adopted in the Order of 09/27/2018, the following arguments:

□ Article 236.quinquies. 2 of the LOPJ, which foresees that the provided in the data protection regulations to the “treatment that the parties carry out the data that would have been disclosed to them in the process development”.

□ That “It is evident that the delivery to the representative of the actor Union of a copy of the audiovisual support of the incidental hearing on measures precautionary measures has no other purpose than procedural, specifically that it could have as many elements of judgment needed in order to challenge in replacement of the order that, to that effect, was issued. However, this is not the use that has been made of it, but that it has been hung in two versions -complete and partial- in a well-known open channel of

communication on the Internet. Moreover, the recording has been manipulated with the introduction of phrases taken from the context in which they were pronounced, and includes, the images and words of the intervening parties and their Lawyers, in addition to the voice of the President of the Court". (The underlining is from the AEPD)

The Procedure for Precautionary Measures XXXX/XXXX was a procedure Incidental open in the procedure for protection of fundamental rights and public liberties in which the STAP-CGT union was a plaintiff (in what successively, the claimed) The lawsuit was filed with the Confederal Committee of the General Confederation of Labor -CGT-Confederal Committee-, the Confederation Territorial of Madrid, Castilla La Mancha and Extremadura of the General Confederation of Labor and the Managing Committee of the STAP-CGT MADRID Union.

SECOND: In view of what is stated in the claim, the AEPD, under the prevented in Royal Decree-Law 5/2018, of July 27, of "urgent measures for the [www.aepd.es](http://www.aepd.es)

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adaptation of Spanish Law to the regulations of the European Union in matters of data protection", which entered into force on 07/31/2018, and in Organic Law 3/2018, of December 5, Protection of Personal Data and Guarantees of the Rights (LOPDGDD), which entered into force on 12/07/2018, has carried out the following actions:

A. Within the framework of reference file E/8039/2018, by means of two separate documents dated 10/31/2018 and 02/19/2019, the claim was transferred, respectively,

to the General Confederation of Workers and to the Lawyer A.A.A. what for  
proceed to its analysis and inform this Agency, within a month, about  
the causes that, in his opinion, had caused the incident that gave rise to the claim.

On 10/31/2018, the AEPD wrote to the Superior Court of  
Justice of \*\*\*LOCALIDAD.1, Social Chamber, 1st Section (hereinafter, the  
claimant) acknowledging receipt of your claim and informing you of the actions  
carried out.

The response of the Attorney of STAP-CGT, A.A.A., has entry in the AEPD on  
03/18/2019 and in it states the following:

-That before the Social Chamber of the TSJ of \*\*\*LOCALIDAD.1 a trial of  
Guardianship of fundamental rights in which she intervened on behalf of the  
Union of Public Administration Workers of the General Confederation  
of Workers of the Community of Madrid and that, after holding the oral hearing,  
The recording was delivered to him. Recording regarding whose broadcast on networks  
has been made aware of through the aforementioned Court.

-Which reiterates to this Agency what it declared to the TSJ of \*\*\*LOCALIDAD.1: "that all  
Each of my actions throughout this process was carried out in  
representation of the aforementioned Union. That is why I proceeded to deposit the only copy  
of the recording in the premises of the Union."

-Add: "I completely ignore who was the author of the broadcast of said recording in  
social networks, since it was communicated to me by the Court and I have no more  
information about it".

- "That subsequently and as a result of the Order of the Superior Court of Justice of  
\*\*\*LOCALIDAD.1, I ceased to be \*\*\*POSITION.1 of the aforementioned Union and currently I am not  
I have the power to represent it".

On 12/05/2018, the response to the request of the

Agency dated 10/31/2018, which is notified on 11/06/2018, of the Lawyer of the Regional Confederation of Madrid, Castilla La Mancha and Extremadura of the General Confederation of Labor, which was one of the co-defendants in the Procedure for the Protection of Fundamental Rights. In his reply, in addition to explain that the AEPD has made an error in requesting information, since it should have having addressed such a request to the Lawyer AAA, provides a copy of the Judgment of the Social Chamber of the TSJ of \*\*\*LOCALIDAD.1, of 09/19/2018, relapsed in the Procedure for the protection of Fundamental Rights and Public Freedoms, lawsuit XXXX/XXXX, filed by STAP-Madrid, represented by the Lawyer A.A.A., Judgment that was dismissed.

B. In accordance with the provisions of article 65.2 of the LOPDGDD, on the date

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On 04/03/2019, the agreement to process the claim was signed.

C. Within the framework of the preliminary investigation actions carried out by the Inspection

of the AEPD under article 67.1 of the LOPDGDD, through Diligence dated

08/08/2019 are incorporated into the administrative file E/08039/2018 various

documents that accredit the following extremes:

-That the full video of the Precautionary Measures Hearing continues to be accessible

from YouTube as of 08/08/2019.

-That at the bottom of the video broadcast from YouTube it is reported that it was published in that

channel on 08/09/2018 and the publication is signed by “CGT-STAP” together with its

anagram.

- That the video published was the same one provided by Section 1 of the Social Chamber of the TSJ of \*\*\*LOCALIDAD.1 to the lawyer of the STAP-CGT Union.
- That the RED.ES website reports that the owner of the domain cgtstap.es “CGT Union of Workers of the Public Administration of Madrid”.

THIRD: On 10/09/2019 the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the STAP-CGT union MADRID in accordance with the provisions of articles 63 and 64 of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations (in hereinafter, LPACAP), for the alleged violation of article 6.1. of the RGPD, typified in article 83.5.a of the RGPD.

#### FOURTH

: The initiation agreement was notified electronically to the claimed party through the app notifies. The notification was rejected. In the certificate issued by the Electronic Notification Service and Authorized Electronic Address of the FNMT-RCM, which appears in the file, shows that the date of making available of notification was 10/10/2019 at 14:02:22 and the automatic rejection date was 10/21/2019 at 00:00:00.

It must be taken into account that, according to article 43.2 of the LPACAP, “The notifications by electronic means will be understood as made at the moment in which access to its content occurs. When notification by means electronics is mandatory, or has been expressly chosen by the user. interested, it will be understood as rejected when ten calendar days have elapsed from the making available of the notification without accessing its content”.

In the present case, notification by electronic means was mandatory for all time that article 14 of the LPACAP establishes in section 2: “In any case, will be obliged to interact through electronic means with the

Public Administrations to carry out any process of a procedure

administrative, at least the following subjects: a) Legal persons”.

FIFTH: Article 64.2.f) of the LPACAP provides that, in the event of not formulating

allegations to the initial agreement, it may be considered a resolution proposal

if it contains a precise statement about the imputed responsibility.

In view of the fact that the respondent has not made any objections to the initial agreement

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and that the initial agreement contained a clear statement on the

imputed responsibility, the resolution is issued.

SIXTH: Royal Decree 463/2020, "declaring the state of alarm for the

management of the health crisis caused by Covid 19", published in the BOE on

03/14/2020, in its Third Additional Provision, "Suspension of deadlines

administrative", ordered:

"1. Terms are suspended and the deadlines for the processing of the

procedures of public sector entities. The calculation of the deadlines

will resume at the moment in which this Royal Decree loses its validity or, in its

case, the extensions thereof.

2. The suspension of terms and the interruption of terms will apply to the entire

public sector defined in Law 39/2015, of October 1, on the Procedure

Common Administrative of Public Administrations.”

This suspension was lifted on 06/01/2020 as provided in article 9

of Royal Decree 537/2020, published in the BOE on 05/23/2020



As a consequence of the suspension of deadlines agreed in the aforementioned regulation, the date of completion of the sanctioning procedure, the date on which the dictated and notified the resolution, is on September 25, 2020. For which have added to the date on which the suspension of deadlines was lifted (06/01/2020) the calendar days that, on the date on which the suspension took effect, remained to end of the maximum period of duration of the procedure.

In view of what has been done, they are considered proven facts in the present sanctioning procedure, the following:

#### FACTS

FIRST: On 07/18/2018, the Judicial Office of the 1st Section of the Chamber of Social of the Superior Court of Justice of \*\*\*LOCALITY.1, delivers to the Lawyer of the Union of Workers of the Public Administration of the Confederation of Workers of the Community of Madrid (STAP or STAP CGT) - plaintiff in the Procedure for the Protection of fundamental rights and public liberties- request of that Lawyer, of a copy in DVD format of the audiovisual recording of the hearing held on 07/11/2018 in the incidental procedure for the adoption of Precautionary Measures XXXX/XXXX, processed as a separate piece, in order to prepare the appeal for reconsideration against the Order rejecting the measures precautionary measures requested issued on 07/11/2018.

This is stated in the text of the Order of 09/27/2018, issued by the same Chamber and Section of the TSJ of \*\*\*LOCALIDAD.1, which agreed to deduce testimony to the AEPD from the dissemination on a social network of the recording of the hearing in case that conduct could be contrary to data protection regulations.

SECOND: The Lawyer of the Territorial Confederation of CGT of Madrid, Castilla La Mancha and Extremadura, co-defendant in the Protection of rights procedure

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fundamental, informed the TSJ of the publication and dissemination on YouTube of the video of the oral hearing of the incidental procedure for the adoption of Measures Precautionary XXXX/XXXX in which his physical image is shown, his voice is heard and the voice of a member of the Tribunal.

This is stated in the Order of 09/27/2018 of the TSJ of \*\*\*LOCALIDAD.1, Chamber 1st Section 1st, which agreed to deduce testimony to the AEPD from the dissemination of the recording of the hearing, THIRD: The AEPD Data Inspection accesses the channel on 06/03/2019 YouTube to the \*\*\*URL.1 address that allows you to view a video. Works in the file a screenshot, obtained on that date and through of that direction, of the video that is accessed. In the image, inside the box intended for viewing the video, there is a blank screen. On top of the document, preceding the screen box appears this indication: "Measures Precautionary. Full Video YouTube". At the bottom of the video access screen is the STAP CGT anagram and the indication "CGT STAP". These also include annotations: "Published on 9 Aug. 2018". "Full Video provided by the Court in the precautionary measures were requested.

FOURTH: There are two screenshots in the file obtained by the Data Inspection from \*\*\*URL.1 from which a video is accessed. In both These documents contain the following captions: "Precautionary Measures. full video Youtube"; "CGT-STAP", "Published on Aug 9. 2018" and the STAP CGT logo. In both documents, the captured image corresponds to a court room during the hearing, minute "18:55/53:12". The image in both documents

It is superimposed in its upper left corner “11.07.2018. DEM XXXX/XXXX”.

One of the documents also bears in the upper right corner the indication

“10:09:17:664”.

FIFTH: There are three screenshots in the file obtained by the Inspection

Data from \*\*\*URL.2 .

In the documents appears, above the box for the video, the

indication “Precautionary Measures Court sel...”. At the bottom of the video space

“Precautionary Measures Selection Court”; the STAP CGT anagram and the indication

“CGT STAP” “Published on Aug. 9, 2018”.

In one of the three documents the captured image is that of a DVD media

stamped with the seal of the TSJ of \*\*\*LOCALIDAD.1 and on it a note

handwritten: “TSJ \*\*\* LOCATION.1. Social room. Sect. 1st. Copy D. XXXX/XXXX. eleven-

07-18”. In addition, at the bottom of the image it is indicated: “0:08/3:21”

The remaining two documents capture the image of the courtroom in the

act of sight In both, at the bottom of the image it is indicated: “0:13/3:21”. overprinted on

the image and in the upper left corner “11.07.2018”, “DEM XXXX/XXXX”. In one

of the documents, this indication is also included in the upper right corner

“10:12:03:789”.

SIXTH: Work in the file a screenshot obtained by the Inspection of

Data from \*\*\*URL.1 on 08/08/2019. In the document you can see

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upper part, the indication “Precautionary Measures Vide...” and in the lower part the

STAP CGT anagram and the legend "Published on Aug. 9, 2018". The image that displayed in the document is from the Court room at the hearing and at the bottom of the image figure "0:12/53:12". The image has these annotations superimposed: On the upper left corner "11.07.2018", "DEM-XXXX/XXXX". in the top corner right "09:50:35:289"

SEVENTH: In the publication on YouTube of the video of the Precautionary Measures hearing 738/2018 object of this claim, both in its full version and in its partial version, contains the anagram of STAP CGT and the indication "CGT STAP".

EIGHTH: In its response to the information request from the AEPD, prior to the admission to processing of the claim, D. <sup>a</sup> A.A.A., acknowledged that she had intervened as a Lawyer of the STAP-CGT Union in the procedure of Guardianship of rights Fundamental and that, after holding the oral hearing in the incidental procedure of Precautionary Measures, was delivered by the Secretary of the Court of the video recording of the hearing.

The Lawyer affirms that she was aware of the dissemination of the recording on networks social through the Court.

The Lawyer affirms that all the actions that she carried out in the course of said process carried out on behalf of STAP-CGT and proceeded to deposit the only copy of the recording on Syndicate premises.

The Lawyer affirms that she does not know who is the author of the broadcast of the recording in social networks and insists that the only information available to him was that which the

The Court itself had provided information regarding the dissemination carried out. He adds that, as a result of the Order of the TSJ of \*\*\*LOCALIDAD.1, ceased to be \*\*\*POSITION.1 of the Union of which It has no power of representation.

FOUNDATIONS OF LAW

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 48.1 of the LOPDGDD,

The Director of the Spanish Data Protection Agency is competent to resolve this procedure.

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The RGPD deals in article 5 with the principles that must govern the treatment of personal data, provision that provides:

II

"1. The personal data will be:

a) treated lawfully, loyally and transparently with the interested party (<<lawfulness, loyalty and transparency>>)

(...)

2. The data controller will be responsible for compliance with the provided in section 1 and able to demonstrate it (<<proactive responsibility>>)"

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

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conditions:

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

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;

c) the treatment is necessary for the fulfillment of a legal obligation

applicable to the data controller;

d) the treatment is necessary to protect the vital interests of the interested party or of another natural person.

e) the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers vested in the controller of the treatment;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the data controller or by a third party, provided that over said interests do not prevail the interests or the rights and freedoms fundamental data of the interested party that require the protection of personal data, in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to treatment carried out by public authorities in the exercise of their functions.

2. Member States may maintain or introduce more

in order to align the application of the rules of this Regulation with regarding the treatment in compliance with section 1, letters c) and e), setting more precisely specific treatment requirements and other measures that guarantee lawful and equitable treatment, including other situations specific treatment under chapter IX.(...)"

Article 4 of the RGPD, "Definitions", offers in section 2 a legal concept of "processing": "any operation or set of operations carried out on personal data or set of personal data, either by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use,

communication by transmission, broadcast or any other form of enabling of

access, collation, interconnection, limitation, suppression or destruction”.

Likewise, article 4 of the RGPD, section 1, understands “personal data”

“any information about an identified or identifiable natural person (<<the

interested>>); An identifiable natural person shall be deemed to be any person whose identity

can be determined directly or indirectly, in particular by means of an identifier,

such as a name, an identification number, location data, a

online identifier or one or more elements of physical identity,

physiological, genetic, psychic, economic, cultural or social of said person;”

The infraction for which the defendant is held responsible is provided for in article

83.5 of the RGPD that states: "Infringements of the following provisions are

will be sanctioned, in accordance with section 2, with administrative fines of 20,000,000

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

as a maximum of the overall annual total turnover of the financial year

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above, opting for the highest amount:

a) The basic principles for the treatment, including the conditions for the consent under articles 5,6,7 and 9.”

The LOPDGDD in its article 72.1.b) qualifies as a very serious infraction "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

A. The conduct for which the defendant is held responsible consisted of processing personal data third parties - the image and the voice, in particular the image and voice of the Lawyer of a of the suing parties, the Territorial Confederation of Madrid, Castilla La Mancha and Extremadura of the General Confederation of Labor, D. B.B.B., and the voice of a member of the Court - without concurring any of the conditions of legality provided for in article 6.1 RGD.

Organic Law 1/1985 of the Judiciary (LOPJ) provides in its article 236 quinquies, 2: "In any case, the provisions of the legislation of the protection of personal data to the treatment that the parties carry out of the data that would have been revealed in the development of the process".

In accordance with the RGD, article 6.1, the processing of personal data will only be lawful if it is covered by any of the conditions detailed in sections a) to f) of the precept. In the matter at hand, the data processing contrary to the RGD materialized in the publication made on the internet channel YouTube, on the date 08/09/2018, of a video with the recording of the act of the Precautionary Measures hearing, procedure XXXX/XXXX -separate piece opened as an incident in the Procedure for the protection of fundamental rights and public freedoms- in which the Letter D. B.B.B. intervened on behalf of his principal. The video was a judicial document to which the defendant's lawyer had access in the development of the jurisdictional activity for the fulfillment of its own purposes.

A video with the complete recording of the hearing and another with a fragment of it. Work in the diverse administrative file documentation obtained from YouTube through links \*\*\*URL.1 and \*\*\*URL.2 from which, respectively, both videos are accessed with the complete recording of the sight and a fragment of it and, in addition, to an image of the physical support (facts proven 3rd, 4th and 6th on the one hand and fact proven 5th on the other).



In the screenshots obtained from both videos, whose duration, as recorded in them, it is, respectively, from "53:12" that of the complete recording and from "03:21" the partial version, you see images of the court room and an image of the support physical version of the recording, a DVD, on which the seal of the TSJ of \*\*\*LOCALIDAD.1 and the handwritten indications "TSJ \*\*\*LOCALIDAD.1. Social room. Sect. 1st. Copy D.XXXX/XXXX. 11-07-18".

When accessing YouTube from \*\*\*URL.1, the content of the recording is reported with this note: "Precautionary Measures. Full Video YouTube". Also listed are these Other annotations: "Published on Aug 9. 2018". "Full video provided by the Court in which precautionary measures were requested.

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The screenshots obtained from the video with the complete recording of the view that show the Courtroom correspond to the minutes "18:55/53:12" (the described in the proven fact 4th) and "0:12/53:12" (that of the proven fact 6th) In the images described in the first of those proven facts, in the upper corner left, the following information appears overprinted that identifies the origin of the video: "11.07.2018. DEM XXXX/XXXX". One of the two documents also bears the upper right corner the indication "10:09:17:664", which seems to correspond to the time the recording was made.

The image of the Court room captured at minute "0:12/53:12" of the recording, which is described in proven fact 6, has these superimposed annotations that reconfirm the origin of the video: "07.11.2018", "DEM-

XXXX/XXXX". In the upper right corner "09:50:35:289".

The processing of personal data -particularly the image and voice of persons-  
nas that intervened in the act of hearing - by publishing on the social network  
YouTube of the recording of that oral hearing held in the incidental proceeding of  
Precautionary Measures XXXX/XXXX, cannot be legally protected in any of  
the reasons for legitimation collected in article 6.1 RGD.

In accordance with article 5.2 RGD, it is the responsibility of the data controller to  
obligation to prove that the treatment respected the principle of legality, that is,  
had its legal basis in any of the conditions of article 6.1. GDPR. Without

However, the defendant has not proven anything, since, as has been stated in the An-  
background of the resolution, rejected the notification of the agreement to initiate the file  
tea.

It must be emphasized, on the other hand, that it has been proven that the conduct  
offender has persisted over time for at least one year. the internet channel  
YouTube reports that the video of the act of the Precautionary Measures hearing of the  
procedure XXXX/XXXX was published on 08/09/2018 and in the file  
administrative it is documented that as of 08/08/2019 the aforementioned video continued  
published on the internet channel.

B. The documentation in the file shows that the Labor Union-  
tors of the Public Administration, STAP, also identified, on occasions with the  
acronym SAP, is responsible for the processing of data subject to the sanctioning procedure.  
tioner.

As stated in the list of proven facts of this resolution, in the videos  
videos published on YouTube, both in the one that corresponds to the full session of the viewing  
of the incidental procedure as in the one that offers only a fragment of it, it appears  
always bear the STAP CGT anagram and the indications "CGT STAP", "Published on

Aug 9 2018”.

The SAP union, established in 1977, is organically linked, according to Article 4 of its Statutes, to the General Confederation of Labor, framed in the corresponding Territorial Confederation within the CGT, hence the publicly identified by the acronym STAP-CGT or SAP-CGT.

C. The respondent, who rejected the notification of the initiation agreement, has not formulated allegations at the opening of the sanctioning file. However, it seems

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advisable to make a brief reflection on the argument put forward by the Lawyer Ms. A.A.A. in its response to the informative request made by the AEPD with prior to the acceptance of the claim for processing.

The Lawyer, who intervened in defense of the defendant in the proceeding for Precautionary Measures XXXX/XXXX, justified the "dissemination of said recording" with this statement: "it is an elementary principle that trials should be public and transparent, not only because the Union's Statutes so require, but also by constitutional imperative, consequently, this Agency lacks the competence to adopt any resolution on the diffusion of said recording".

The treatment of personal data that the Courts and Tribunals carry out in the development of its jurisdictional activity is covered by the basis of legality described in article 6.1. e) RGPD: "the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers vested in the data controller".

Well, in the case under consideration we are dealing with the dissemination on a social network of a document - the recording of the hearing of an incidental proceeding - that was obtained in the development of jurisdictional activity and which has been used for a purpose totally unrelated to that for which it was delivered, the exercise of the right of defending. The conduct of the defendant object of the sanctioning file has nothing to do with do with the development of jurisdictional activity and is the result of a free and of the claimed, maintained over time for at least one year. So, no consideration deserves the argument of the Lawyer who intends to make extendable to the illicit action of the defendant the principle of publicity that, by constitutional imperative and under the conditions established in the LOPJ and laws of procedure, presides over jurisdictional activity. It is strictly in the activity jurisdiction in which the principle of publicity that is invoked governs, in the terms of Articles 232 to 236 of the LOPJ in relation to the respective laws of process.

The recording by the Court of the act of the hearing was part of the activity jurisdiction of the TSJ of \*\*\*LOCALIDAD.1; It was a legal activity documentation of judicial proceedings in accordance with the provisions of the LOPJ. Let us remember that article 230.1. of the LOPJ establishes that "The courts and courts and prosecutors are obliged to use any technical means, electronic, computerized and telematic, placed at your disposal for the development of its activity and exercise of its functions, with the limitations that the use of such means establish chapter I bis of this title and the organic regulations of personal data protection." Oral proceedings and recorded hearings and documented in digital format may not be transcribed, except in cases expressly provided for in the law (paragraph 3 of article 230 LOPJ).

The delivery that the Judicial Office of the 1st Chamber, 1st Section of the TSJ, made to the

Lawyer of the defendant, at his request, of a judicial document, of the DVD with the recording of the hearing, since that was the documentary support of a procedural action, it was with a specific purpose: the preparation of the reconsideration appeal against the Order rejecting the precautionary measures requested in the framework of the Protection of Fundamental Rights procedure filed against CGT, Committee

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Confederal, the Territorial Confederation of Madrid, Castilla La Mancha and Extremadura of the CGT and the Managing Commission of STAP-MADRID. The treatment carried out by claimed from the judicial document that was delivered to his Lawyer for the purpose of exercise the right of defense within the framework of this procedure, which he has disseminated in a social network, is not covered by any of the legal bases of article 6.1.

GDPR.

The defendant used the document that was provided to his Lawyer within the procedure in which he intervened and with a specific purpose within said procedure apart from it. Used it for a purpose unrelated to the procedure and to the defense of the claims deduced in that procedure and disclosed it in a social network. Through such dissemination, he incurred in an illicit treatment of data personal data of third parties, the image and the voice of the participants.

This conduct constitutes an infringement of article 6.1 RGD, in relation to the article 5.1.a), typified in article 33.5.a) of the RGD. Infraction qualified by the article 72.1.b) LOPDGDD, for prescription purposes, very serious.

Article 58 of the RGD, "Powers", states:

#### IV

“2 Each supervisory authority shall have all of the following powers

corrections listed below:

(...)

d) order the person responsible or in charge of treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period.

(...)

i) impose an administrative fine under Article 83, in addition to or instead of the measures mentioned in this section, depending on the circumstances of the particular case

(...)”

A. In determining the administrative fine to be imposed, the following provisions of articles 83.1 and 83.2 of the RGPD, precepts that provide:

“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 as the number of stakeholders affected and the level of damage and damages they 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 have

applied under articles 25 and 32;

e) any previous infraction 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 put

remedying the breach and mitigating the possible adverse effects of the breach;

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 if the person in charge or the person in charge notified the infringement and, in such

case, to what extent;

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

previously ordered 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

certificates 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 realized or losses avoided, direct

or indirectly, through 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 treatments of personal data.
- 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 commission of the offence.
- e) The existence of a merger by absorption process after the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when it is not mandatory, a delegate for the protection of data.
- h) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any interested."

In determining the amount of the sanction of an administrative fine that

it is appropriate to impose the defendant as responsible for an infringement of article

83.5.a) RGPD, it is appreciated, in light of the transcribed precepts and taking into account

consideration the documentation that works in the file, the concurrence of the

following elements that operate as aggravating factors:

- The processing of data carried out by the respondent deserves the qualification, in the



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terms used by article 83.2., section a), of the RGPD, serious. A

For this purpose, the purpose pursued with the treatment operation is valued.

taking into account the origin of the published document and the diffusion it has

could achieve the illicit processing of personal data.

- The illicit treatment of personal data carried out through the publication in

the YouTube channel of the video of the Precautionary Measures hearing was notoriously

malicious or intentional (article 83.2.b RGPD) The publication on social networks

of both the full video and fractions of it and the circumstance that the

publications have not been unsubscribed after a year can only

explain whether there is an unequivocal will to disseminate a document

judicial process with the consequent illicit processing of personal data. The character

intentional unlawful processing of personal data is confirmed by the

circumstance that two videos have been released (a complete recording and

another very brief of a few moments of sight) and the interest shown by the

demanded to inform of the nature of the judicial file that the recording has

spread. We refer in this regard to the declared proven facts.

- The infringement of the principle of legality has been maintained over time for more

one year: the video was made public on YouTube on 08/09/2018 and the

08/08/2019 was still published. There is no information that on the date of

issue this resolution the video would have been removed from the social network (article 83.2

k, of the RGPD in relation to article 76.2.a) of the LOPDGDD)

The RGPD, article 83.1, requires that, in the imposition of administrative fines for infringement of the RGPD, the control authority guarantees that they are, in each case, “effective, proportionate and dissuasive”. These criteria that govern the determination of the amount of the sanction of a fine, in the event that we occupies, to assess all the circumstances that could reflect less guilt of the offender or a decrease in the unlawfulness of her conduct, without thereby the violated fundamental right is no longer effectively protected.

In accordance with the provisions of the aforementioned provision, it is necessary to take into account consideration the small size of the Union responsible for the infraction, a regional union (the Autonomous Community of Madrid) and with little level of implantation whose economic resources do not seem to be abundant judging due to the fact that the headquarters it occupies is premises assigned by CGT. can't either ignoring, for the purposes of article 83.1 RGPD, that the allegedly infringing subject is a union, a non-profit association as well as an institution of social character called to represent the general interest of a sector of the population.

Based on the foregoing, it is agreed to sanction the defendant with an administrative fine. whose amount is set at 3,000 euros.

B. Among the corrective powers that article 58.2 of the RGPD attributes to the control authorities appear, in addition to the administrative fine provided for in their section i), that of “ordering the controller or processor that the processing operations comply with the provisions of this Regulation, when appropriate, in a certain way and within a specified period”, section d).

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Article 83.2 of the RGPD allows them to be imposed, together with the sanction of fine, some of the other corrective measures included in article 58.2

GDPR. Thus, article 83.2 establishes that, depending on the circumstances of each case, "administrative fines will be imposed" "in addition to or as a substitute for those measures contemplated in article 58, section 2, letters a) to h) and j)".

Thus, "in addition" to the sanction of a fine, under article 58.2.d)

RGPD, the claimed party is ordered to remove the video or

videos -there is a complete and a partial version- relative to the sight of the incident of

Precautionary Measures XXXX/XXXX of the procedure for Protection of Rights

rights and public liberties followed before the 1st Section of the 1st Chamber of the TSJ

of \*\*\*LOCALIDAD.1, in which he was a plaintiff. An essential measure, therefore,

As long as the defendant does not proceed to withdraw the videos, it will continue to perpetrate the infringement of article 6.1.a) RGPD for which it is responsible.

The term granted to the claimed party to proceed to withdraw from the YouTube channel

the videos alluded to is 10 calendar days that will be computed from the day in which the

this resolution is executive.

It is recalled that failure to comply with the sanctions imposed in this

resolution could constitute a new infringement of the data protection regulations.

data typified in article 83.6 of the RGPD, a rule that provides: "The breach

of the resolutions of the supervisory authority in accordance with article 58, section 2,

shall be sanctioned in accordance with section 2 of this article with fines

administrative fees of a maximum of 20,000,000 Euros or, in the case of a company, of

an amount equivalent to a maximum of 4% of the total annual turnover

of the previous financial year, opting for the highest amount.

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 THE ADMINISTRATION WORKERS' UNION

PUBLIC (STAP-CGT), with NIF G83122739, for an infraction of article 6.1.a), in relation to article 5.1.a), of the RGPD, typified in Article 83.5.a) of the RGPD, a fine of €3,000 (three thousand euros).

SECOND: ORDER THE UNION OF WORKERS OF THE

PUBLIC ADMINISTRATION (STAP-CGT), with NIF G83122739, which, within a period of ten calendar days from the execution of this resolution, proceed to WITHDRAW from the YouTube channel the video/videos of the hearing of the Precautionary Measures incident XXXX/XXXX, filed before the 1st Section of the 1st Chamber of the TSJ of \*\*\*LOCALIDAD.1 in the framework of the procedure for the protection of fundamental rights and public liberties in which that entity was a plaintiff. The removal order comprises both the full version of the video as well as any fragment or partial version of it.

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THIRD: NOTIFY this resolution to the WORKERS' UNION

OF THE PUBLIC ADMINISTRATION (STAP-CGT), with NIF G83122739.

FOURTH: 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

Article 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 article 68 of the General Collection Regulation,  
approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of the  
Law 58/2003, of December 17, through its entry, indicating the NIF of the  
sanctioned and the number of the procedure that appears in the heading of this  
document, in restricted account number ES00 0000 0000 0000 0000, open to  
name of the Spanish Agency for Data Protection in the bank  
CAIXABANK, S.A.. Otherwise, it will be collected in the period  
executive.

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

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

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Sea Spain Marti

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