 Procedure No.: PS/00410/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Mrs. A.A.A. (hereinafter, the complaining party), dated March 25, September 2020, filed a claim with the Spanish Agency for the Protection of Data.

The claim is directed against Don B.B.B., with NIF ***NIF.1, (hereinafter, the claimed). The grounds on which the claim is based are as follows:

Publish personal data of the claimant on the ***URL.1 website without their authorization. or consent, including photographs, personal notes, and references reference to their sexual relations with the defendant. It provides data on the possi- responsible for this website with which he is in the process of divorce.

That according to the complainant took place on the date of: between March 11, 2020 and time of claim

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

As a result of the research actions carried out, it is found that the

data controller is the claimed party.

As a result of the research actions carried out, it is found that the

responsible for the treatment is the claimed.

 On October 16, 2020, the extremes denounced are verified

found on the website numerous photographs scattered throughout the

site, many personal notes of the claimed and references to their activity

sexual.

Diligence is generated with screen printing of the "Cover" pages,

“Beginnings”, “Your notes” and some photos from the Gallery.

On October 19, 2020, this Agency agrees to notify the entity

of hosting Internet of the website precautionary measure of removal of the content

reclaimed.

 On October 20, this entity is notified.

closed.

 On October 21, 2020, it is verified that the website has been

 There is no page or document on this website where it is specified

the person in charge of the site. However, a search is performed using the

WHOIS tool obtaining matching result in name and surname

with the claimed, as owner of the domain “***URL.1”.

 Made request for information of the complete data of the ownership

of the domain "***URL.1" to the public business entity RED.ES, dated

October 28, 2020, this Agency receives a response letter

sent by RED.ES reporting the data of the owner of the domain resulting

be consistent with the data of the claimed.

THIRD: On February 25, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the defendant, with

glo to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-

Common Administrative Procedure of Public Administrations (hereinafter, LPA-

CAP), for the alleged infringement of Art 6.1.a) of the RGPD, typified in Art 83.5 of the

GDPR.

FOURTH: Having been notified of the aforementioned initiation agreement, the party complained against submitted a written

pleadings in which, in summary, it states the following:

1. That since March 2020 he is the owner of the domain ***URL.1; in that

domain have included texts and photographs of the relationship maintained for 7

years with the claimant, the last two already married. The process of

divorce, which was very painful for him, led him to create the aforementioned page with

hoping to remember the good times and reconcile. This proves it

that there are no reproaches or insults. The page was not intended to be visited,

but it was addressed to a single addressee, as it was; lacked interest

for third parties. Therefore, the exception of article 4.a) of

the LOPDGDD, as it is something personal and domestic. European regulations

It was designed for large corporations or companies that make massive use

of data. The complaining party may request the withdrawal of information by

responsible for its publication, but it should not be penalized for it. could only

be reported to the civil courts for violation of privacy and

honor.

2. The Agency collects in the initial agreement, article 4, sections 1 and 2 of the

RGPD, forgetting that the surnames of the claim are not included in the publication.

mante, only his first name, so he is somewhat anonymous. in post

44 photographs appear, 36 in which they are together or with other people and 8

in which she appears alone, but with a pixelated face. In any case,

being from photographs of the inner circle, they must be considered domestic. The

Images do not identify or make the complaining party identifiable.

3. If it is considered that article 6 of the RGPD could have been violated,

Spain a contract signed between both parties in 2013, in which

feels in the diffusion of images, photographs or videos in any modality

or format. This is stated in point 10 of the contract. The page has been op-

tive until the divorce decree was issued; and at no time did he address

He went to request its cancellation.

4. The following have been taken into consideration when imposing the sanction:

aggravating factors: a) the nature, seriousness and duration of the offence, taking into

account the nature, scope or purpose of the data processing operation

concerned as well as the number of stakeholders affected and the level of damage.

damages and damages they have suffered; nature and gravity that values subjectively

mind the agency, having to take into account the duration, which has been brief, the

limited scope since it has not been disseminated, the purpose was reconciliation

tion. The respondent has not indicated that damages have been caused

I swim. As regards intentionality or negligence, it must be assessed that

pixelated the images to avoid recognition by third parties. Shows his

disagreement with the aggravating factors applied.

The supporting document provided by the claimed party to demonstrate that it had

with the consent of the complaining party, is called "Contract of submission

BDSM", in which the complaining party, in use of the faculties and giving it value con-

contractual, is delivered to his master, owner, lord and master (the claimed), as

slave/submissive, giving her all the rights over her person. On the other hand, the

claimed takes possession of the body and mind of the claimant, considering her his

property. Section 10 indicates the following:

"I waive any right of privacy or concealment. If my master decides to exhibit

Show myself to other people I will show myself to them in the terms indicated to me,

assuming it can even be bare-faced. This disclaimer includes photographs

and videos of me or my person in any situation or form, accepting that my Master

and Lord can show them. If my Master and Lord decides to make public images of me

(photographs or videos), in all my acts as your submissive/slave, I will consider you a

honor. It is also the power of my Master and Lord to punish me, possess me and submit me

publicly to enjoy my full submission"

In the "BDSM Submission Contract", there is a section on "Termination of Contract".

Submission Agreement" indicating: This Agreement may be terminated at any time.

any time by either party.

FIFTH: On March 22, 2021, the instructor of the procedure agreed to the

opening of a period of practice tests, considering incorporated the

previous investigative actions, E/08354/2020, as well as the documents

provided by the respondent, on March 18, 2021.

SIXTH: On April 3, 2021, a resolution proposal was formulated,

proposing that the Director of the Spanish Data Protection Agency

sanction the claimed party with a fine of 10,000 euros, for an infraction of the

Article 6.1.a) of the RGPD, typified in Article 83.5 of the RGPD, and qualified as

very serious infraction, for prescription purposes, by article 72.1.b) of the

LOPDGDD.

The respondent filed a pleadings brief, stating the following:

“The Instructor understands that the legitimizing cause of the treatment is not applicable to the case.

Data processing contained in article 6.1.b) of the RGPD, arguing for this that,

although the contract signed between the parties (document no. 1 provided in previous

brief of allegations) could be considered valid for the treatment of images,

Said contract was terminated by the claimant herself when requesting a divorce from the claimant.

mado. It must be assumed that in order to reach this conclusion, the application of the

Article 102 Civil Code that stipulates that one of the effects of the admission of the de-

order of annulment, separation or divorce is the revocation of the consents and

rights that either spouse would have granted to the other…

In accordance with section 2 of article 2 of Organic Law 15/1999, of 13 December

December (LOPD), the regime for the protection of personal data that is

established in the Organic Law will not apply: To the files maintained by per-

physical persons in the exercise of exclusively personal or domestic activities.

Well, in the present case there is no more personal data of the claimant than

a series of pixelated photographs, and that implies that there are no surnames, addresses,

activities, references or any other element susceptible to knowledge or em-

employment by third parties, which prevents their rights from being affected in any way.

no way On the other hand, these are files maintained by a natural person "for

ticular", so that there has been no professional, commercial or industrial treatment,

no company has intervened, and the treatment has been carried out in the area

tive of a personal or domestic activity.

As the Instructor rightly points out, article 83.2 of the RGPD provides that when deciding the

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

The aggravating and mitigating factors that are listed in said article will be taken into account.

as well as any other that may be applicable to the circumstances of the

case. Regarding the aggravating legal grounds of the applied to the file

In the sanction proposal, it affects firstly, and literally, the duration

infringement, but the RGPD speaks more specifically of the "continuous nature"

of the infraction", that is, it refers to the number of occasions in which the defendant

has carried out the infraction and, it is the case, that the defendant carried out a single and exclusive

sive publication without additions or other subsequent interventions, so the current

tion had an isolated character regardless of whether the photographs remained

ran on the page during the seven months it was in force.

As regards intent, it does not appear that the Regulation refers to the fact that the offender

has done for one purpose or another, as interpreted by the Instructor, but to the existence

presence or not of negligence, so that, although ignorance of the Law does not exist,

compliance, it must be taken into account whether the alleged offender is a person

physical person that does not usually process data.

The same indeterminacy can be seen with respect to the criterion of seriousness of the infraction.

tion and, even more so if, as indicated by the instructor, said severity is a function of the da-

damages suffered by the claimant, since the file does not seem to contain

the least accreditation in this regard.

In any case, the proposed sanction fails to comply with the provisions of articles 83.3 and

83.2 of the RGPD insofar as it totally dispenses with the principle of proportionality and attention

exclusively to a mere collection effort in which a minimum and prudent

careful examination of the economic circumstances of the alleged infringer.

The respondent has as his only income what he obtains through his work

employee who, as can be seen through the pay slips that are accompanied as do-

document no. 1, barely exceeds 1,000.00 euros per month.

PROVEN FACTS

FIRST: On September 25, 2020, the claimant filed a claim

before the Spanish Agency for Data Protection, directed against the claimed party. The

reason is the publication on the website ***URL.1, of personal data of the

claimant without your permission or consent, including photographs,

personal notes and reference to their sexual relations with the defendant.

Provide data of the possible person in charge of this website with which you are in

contentious divorce process.

That according to the claimant took place on the date of: between March 11, 2020 and

time of claim.

SECOND: On October 16, 2020, the extremes denounced are verified

found on the website numerous photographs scattered throughout the site,

many personal notes of the claimed and references to her sexual activity.

Diligence is generated with screen printing of the pages "Cover", "Beginnings",

“Your notes” and some photos from the Gallery.

The screenshots show that, although it has been tried in some

photographs its pixelated, the image of the claimant is absolutely identifiable.

THIRD: On October 19, 2020, it was agreed by this Agency to notify

to the Internet hosting entity of the website precautionary measure of withdrawal of the

claimed content. On October 20, it is notified and on October 21,

October 2020 it is verified that the website has been closed.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), recognizes each

Control Authority, and according to the provisions of 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), the Director of the Agency

Spanish Data Protection is competent to initiate and resolve this

process.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the

Spanish Agency for Data Protection will be governed by the provisions of the

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

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.”

The physical image of a person, in accordance with article 4.1 of the RGPD, is a
personnel and their protection, therefore, is the subject of said Regulation.

II

Article 4.2 of the RGPD defines "treatment" as: "any operation or set
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, suppression or destruction."

The recording and dissemination of images, which identify or make identifiable a
person, on social networks or websites, involves data processing
personal and, therefore, the person who does it has to rely on one of the
legitimizing causes indicated in article 6 of the RGPD. In these cases, as
In the case that is the subject of the claim, the only legitimizing cause is usually the
consent in general. And it is the person who records and uploads the images to a
web page which must demonstrate that it has that consent.

In order for this treatment to be carried out lawfully, the following must be fulfilled:
established in article 6.1 of the RGPD, which indicates:

<<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 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 processing is necessary to protect the vital interests of the data subject 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 person responsible for the

treatment;

f) the treatment is necessary for the satisfaction of legitimate interests

pursued by the controller or by a third party, provided that on

such interests do not override the interests or rights and freedoms

fundamental data of the interested party that require the protection of personal data, in

particularly 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.>>.

Article 7 of the RGPD establishes, in its first section, the following: “1. When the

treatment is based on the consent of the interested party, the person in charge must be

capable of demonstrating that he consented to the processing of his personal data.

On the other hand, the first section of article 7 of the LOPDGDD specifies how

if this consent: “1. In accordance with the provisions of article 4.11 of the

Regulation (EU) 2016/679, the consent of the affected party means any

manifestation of free, specific, informed and unequivocal will by which this

you accept, either by means of a declaration or a clear affirmative action, the treatment

of personal data that concerns you."

III

In accordance with the accreditations currently available

sanctioning procedure, it is considered that the defendant did not obtain a consent

valid consent of the claimant for the processing of their personal data that has been

verified that it occurred when it was published on the website ***URL.1 photographs, notes

personal information and reference to their sexual relations with the defendant of the

claimant, once the separation had taken place and the process of separation had begun.

contentious vorce; nor was it legitimized by the contractual relationship that it maintained.

they had from the moment of the breakup of the couple.

Known facts could constitute an infringement, attributable to the claimant.

claimed, for violation of article 6.1 outlined, as there was no consent for the treatment

processing of the data carried out or any other cause that legitimizes said treatment.

In relation to the supporting document provided by the claimed party to

demonstrate that it had the consent of the complaining party, we must start

of article 10 of the Spanish Constitution, which states, in its first section, that

"The dignity of the person, the inviolable rights that are inherent to him, the free

development of personality, respect for the law and the rights of others are

foundation of political order and social peace" while the second section

adds that "The rules relating to fundamental rights and freedoms that

the Constitution recognizes shall be interpreted in accordance with the Universal Declaration

of Human Rights and international treaties and agreements on the same

matters ratified by Spain". In this sense, article 1 of the Charter of the

Fundamental Rights of the European Union affirms that "Human dignity is

inviolable. It will be respected and protected."

The Constitutional Court stated in its Judgment 94/1998, of May 4, that

Through the fundamental right to data protection, the person is guaranteed the

control over your data, any personal data, and its use and destination, to

avoid illicit traffic of the same or harmful to the dignity and rights of the

affected. Previously, in its Judgment 57/1994, of February 28, the Court

Constitution had stated that “the rule of art. 10.1 C.E., projected on the

individual rights, implies that dignity must remain unchanged whatever

whatever the situation in which the person finds himself, constituting, consequently,

an invulnerable minimum that every legal statute must ensure, so that the

limitations imposed on the enjoyment of individual rights do not entail a

contempt for the esteem that, as a human being, the person deserves”.

Therefore, human dignity, inviolable, and the fundamental rights that are

inherent, among which we find the protection of personal data, are

foundation of the political order. In relation to the contract provided by the party

claimed, in which the claimant renounces "her privacy" and the protection of her

image and, in general, to "all the rights over his person", surrendering as

"slave / submissive", we must conclude that it lacks any validity

contractual. In this sense, article 6 of the Civil Code establishes that the exclusion

of the applicable Law and the waiver of the rights recognized therein only

They will be valid when they do not contravene the interest or public order or harm the

third parties. In view of what has already been stated, the waiver of these fundamental rights

It is considered contrary to public order, which entails its lack of validity.

Regarding the allegations of the respondent referred, in the first place, to the fact that the RGPD applies since the exception do-

domestic, as established in article 2.2 of the RGPD and article 2.2.a) of the LO-

PDGDD, the following should be noted: it says to article 2.2 of the RGPD:

"two. This Regulation does not apply to the processing of personal data:

c) carried out by a natural person in the exercise of activities exclusively

personal or domestic mind.

This Agency, on the other hand, considers that the actions of the requested person cannot to be included in this exception.

To define what should be considered treatment of an exclusively personal nature,

personal or domestic, although in this case the application of those

precepts without entering into that analysis, it is convenient to take into account the

CJEU doctrine stated in the Lindqvist, Rynes and Jehovah's Witnesses judgments

(STJUE of July 10, 2018, C-25/17).

In accordance with these judgments, it can be considered that the CJEU understands, on a general, that the exception of activities of an exclusively personal or domestic nature

méstico has to be interpreted in a strict sense, only when the treatment of

data affects "incidentally" the private life or intimacy of "other people", different

tas of the person in charge that treats the personal data. It is also said by the Tri-

that the character of personal or domestic activities is not defined exclusively

mind as opposed to the dissemination of data, but that dissemination implies that a

processing of personal data relating to the private or family life of individuals

cannot be considered excluded from the protective regulations, so that it can

ber other cases in which, even when processing personal data of a personal or domestic nature,

domestic, this could not be understood as included within the exception provided for in article

ass 2.2 c) of the RGPD.

It is not possible to lose sight of the processing of personal data that is carried out in the

present case consists of the publication and dissemination of images and private notes in

a website that could be accessed by third parties. As can be seen, in this case

is that the private life or intimacy of another person is "incidentally" affected,

but the very object of this data processing is, precisely, the image of

the claimed one. That is to say, the treatment of the personal data of the claimed party whose

image is being spread against your will is not a mere "incidental" annoyance

within a more general data treatment, but that the use of your personal data

les is precisely the goal of treatment. Therefore, it is not possible to consider

In the event that said data processing of the complaining party is merely incidental,

rather, it is a “main” treatment.

The STJUE of July 10, 2018, C-25/17, Jehovah's Witnesses, establishes an inter-

interpretation about the concept of exclusively personal or domestic activities

and it says like this:

42 As the Court of Justice has held, Article 3(2), second indent,

of Directive 95/46 must be interpreted in the sense that it contemplates only

activities that are part of the private or family life of the participants.

culares In this respect, it will not proceed to consider that an activity is exclusively

personal or domestic interest, for the purposes of said precept, when its purpose is to allow

access to personal data to an undetermined number of people or when the action

activity extends, even in part, to the public space and is therefore directed

towards the outside of the private sphere of the person who proceeds to the treatment of the

data (see, in this regard, the judgments of November 6, 2003, Lindqvist,

C-101/01, EU:C:2003:596, paragraph 47; of December 16, 2008, Satakunnan Ma-

rkkinapörssi and Satamedia, C-73/07, EU:C:2008:727, paragraph 44, and of December 11

2014, Ryneš, C-212/13, EU:C:2014:2428, paragraphs 31 and 33).

The Judgment of the CJEU of 6/11/2003, "Lindqvist" refers to the assumption of a person

physicist, who was volunteering at a church as a catechist in Sweden. Is

person had created his own web page on the internet, open to anyone, in the

who in a humorous tone referred to his fellow volunteers at the

church, revealing their names, phone numbers, hobbies, and in some cases co-

mentioned that a colleague of hers was on sick leave due to an injury or illness in a

foot, which was considered as a health fact. And it refers to whether this type of action

tions would be excluded from the application of data protection regulations if

considered exclusively personal or domestic activities, indicating:

“30. Ms. Lindqvist maintains that an individual who, in the exercise of his freedom of

expression, creates various web pages within the framework of a non-profit activity

or in his leisure time, he does not carry out an economic activity and, therefore, his conduct

not subject to Community law...

31. The Swedish Government claims that, by transposing Directive 95/46 into domestic law, the

Swedish legislator I consider that the processing, by a natural person, of personal data

which consists of transmitting said data to an indeterminate number of recipients.

users, for example, via the Internet, cannot be classified as exclusive activities.

-

vaguely personal or domestic

in the sense of article 3, paragraph 2, second

script, of Directive 95/46…

□

□

45. Well, voluntary or religious activities such as those carried out by Ms. Lin-

dqvist cannot be compared to the activities mentioned in the first indent of the article

3, paragraph 2, of Directive 95/46 and, therefore, are not included in said ex-

reception.

46 As regards the exception provided for in the second indent of Article 3(2),

of Directive 95/46, in the twelfth recital of the latter, relating to said

exception, are cited as examples of data processing carried out by a person

exercise in the exercise of exclusively personal or domestic activities the corresponding

presence and maintenance of a repertoire of addresses. This exception must be interpreted

be in the sense that it contemplates only the activities that are registered in

the framework of private or family life of individuals; Obviously this is not the

case of a processing of personal data consisting of the dissemination of such data

over the Internet in such a way that they are accessible to an unspecified group of people."

Therefore, the activity carried out by the complaining party is fully applicable to the

RGPD, since it cannot be considered a personal or domestic activity.

Second, the complaining party alleges that it pixelated the images so that they would not be

identify the claimant. In the documentation that is part of the procedure,

The images have been obtained as they appeared published on the website claiming

verified, proving that the claimed one is absolutely identifiable in the photographs

days published.

The violation of article 6.1 of the RGPD is typified in article 83 of the

RGPD that, under the heading “General conditions for the imposition of administrative fines”

nistrative”, he points out:

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

with section 2, with administrative fines of a maximum of 20,000,000 Euros 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

treatment under articles 5,6,7 and 9.”

The LOPDGDD in its article 72.1.b) qualifies this infraction, for prescription purposes,

as a very serious offence.

In determining the administrative fine that should be imposed, the

observe the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate

lan:

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

proceedings under this Article for infringements of this Regulation

indicated in sections 4, 9 and 6 are in each individual case effective, proportionate

nothing 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 an admissible fine

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 interested parties affected and the level of damages and losses.

who have suffered;

b) intentionality or negligence in the infringement;

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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 data controller or data processor.

taking into account the technical or organizational measures that have been 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 re-

medium to 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 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 ordered

previously against the person in charge or the person in charge in question in re-

relationship with 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, "San-

tions and corrective measures", establishes:

"two. In accordance with the provisions of article 83.2.k) of the 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 not mandatory, a data protection delegate.

cough.

h) The submission by the person in charge or person in charge, voluntarily

to alternative conflict resolution mechanisms, in those su-

positions in which there are controversies between them and any interested

do."

For the purposes of setting the amount of the fine sanction that should be proposed to be imposed

put the claimed for the infringement of the RGPD that is attributed to him, it is appreciated that

the following factors concur that operate aggravating the unlawfulness of its concurrence:

conduct or your guilt:

- The nature, seriousness and duration of the infraction, taking into account the na-

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

the number of interested parties affected and the level of damages suffered

fried;

- The intention or negligence in the infringement;

The circumstance of the lack of linkage of the action is appreciated as a mitigating circumstance.

activity of the offender with the processing of personal data.

In relation to the allegations of the respondent regarding the aggravating factors applied,

there is no doubt about the duration of it: from the month of March

2020, until October of the same year, when a Data Inspector from the Ins-

The request of the Spanish Agency for Data Protection is addressed to the entity of

Internet hosting of the website to request its deletion. The seriousness of the offense

must be assessed from the objective of the claimant, not the claimed, being

accredited the damages suffered.

On the other hand, it is an intentional action, as indicated by the defendant,

stating that his intention was to reverse the situation of the separation and recover the

claimant.

The claimed part is accompanied by the payroll for some months of the year 2021.

notes that the net salary is around 1,300 euros per month.

By proportionality is usually understood colloquially, the reduction of the sanction imposed. However, this does not necessarily have to be the case: proportionality it means adequacy, measure, weighting and balance. Therefore, this is violated principle not only when the excess committed is maintained, but also when that is unjustifiably reduced more than it should because in this case it would reach the ineffectiveness of the sanction, depriving it of the persuasive effects that it can to offer. That is why article 29.3 of Law 40/2015, by regulating the principle of proportionality, uses the expression "due suitability and necessity of the sanction to impose and its adequacy to the seriousness of the constitutive act of the infraction".

In accordance with the salary of the claimed party, the amount imposed may be considered disproportionate, so in application of the principle of proportionality it is appropriate to reduce it to the amount of 1,500 euros, to maintain the proportionate and at the same time dissuasive character that must be guaranteed with the imposition of administrative fines.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria tion of the sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE Don B.B.B., with NIF ***NIF.1, for a violation of Article 6.1.a) of the RGPD, typified in Article 83.5 of the RGPD, and qualified as a very serious, for prescription purposes, by article 72.1.b) of the LOPDGDD a fine of €1,500 (one thousand five hundred euros).

SECOND: NOTIFY this resolution to Don 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, of the Administrative Procedure Co-
of the Public Administrations (hereinafter LPACAP), within the term of payment
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 in the name of the Spanish Agency
Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of
Otherwise, it will be collected during 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
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
resents may optionally file an appeal for reconsideration before the Director
of the Spanish Agency for Data Protection within a month from the date of
the day following the notification of this resolution or directly contentious appeal
before the Contentious-Administrative Chamber of the National High Court,
in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for 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 interested party

do states its intention to file a contentious-administrative appeal. Of being

In this case, the interested party must formally communicate this fact in writing

addressed to the Spanish Agency for Data Protection, presenting it through the Re-

Electronic registry of the Agency [https://sedeagpd.gob.es/sede-electronica-web/], or to

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

that proves the effective filing of the contentious-administrative appeal. If the

Agency was not aware of the filing of the contentious-administrative appeal

tive within 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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