

□ File No.: PS/00539/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: THE GENERAL DIRECTORATE OF THE CIVIL GUARD, POST OF

***LOCALIDAD.1, on February 8, 2021, sends the report of the affected party

A.A.A. (hereinafter, the claimant party) before the Spanish Agency for the Protection of
Data.

The claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the part
claimed).

The grounds on which the claim is based are as follows:

The affected person reveals the recording made on January 26, 2021, of a
video in which he appears attacked by the defendant and subsequent dissemination through a
WhatsApp application messaging group with twelve recipients.

Together with the claim, the complainant provides the following documentation:

- Record of the complaint filed by the affected party at the DGGC *** LOCATION.1 with
date of January 27, 2021 for possible violation of the regulations on
Personal data protection.

- Report drawn up by the COMMAND OF THE CIVIL GUARD OF LUGO No.

*** ATTESTED.1 dated January 27, 2021.

- Recording indicated in the claim (physical object)

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

Data Protection agreed to admit for processing the claim presented by the party
claimant.

THIRD: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGPD), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following ends:

Requested to the defendant, with notification date of March 12, 2021, that inform this Agency about the dissemination of the recording indicated by the Guard Civil, as of the date of this report, no written response has been received.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/8

Requested to the DGGC ***LOCALIDAD.1 to inform if cases have been opened in any Court as a result of the reported events, dated March 16, 2021 is received at this Agency, a written response informing that it was opened Judgment Procedure on Minor Crimes 27/2021 dated February 19, 2021 in the Court of First Instance and Instruction No. 2 of Villalba (LUGO) (hereinafter, the Court), being its status "Closed with sentence".

Requested from the Court if they have been able to determine the recipients of the dissemination of the recording of the attack and a copy of the sentence handed down, dated 21 September 2021, this Agency receives a written response informing of the that "LBV No. 27/2021 was followed for a crime of minor injuries without having been investigated facts related to the dissemination of images, thus ignoring the

scope of the diffusion referred to in his writing". According to the sentence imposed a fine of 120 euros and compensation to the victim for civil liability for the injuries suffered of 450 euros.

Therefore, it is concluded that there was an assault with a complaint before the Civil Guard that ended in trial for the crime of minor injuries and that, according to what was provided in the complaint, there was a recording by the accused after the attack.

FOURTH: On December 20, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 6.1 of the RGD, typified in article 83.5 of the GDPR.

FIFTH: After the period granted for the formulation of allegations to the agreement to initiate the procedure, it has been verified that no allegation has been received any by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP) -provision of which the party claimed was informed in the agreement to open the proceeding- establishes that if allegations are not made within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the party complained against has made no objections to the agreement to initiate the file and In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The recording and subsequent broadcasting through a group of messaging application WhatsApp with twelve recipients, from a video made on January 26, 2021, where the claimant is assaulted; being the same identifiable.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/8

SECOND: On January 3, 2022, the agreement to initiate this sanctioning procedure, giving a period of ten days to present allegations the same.

Said period has elapsed without having received any allegation by the party claimed, so said agreement becomes a resolution proposal of in accordance with article 64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter LPACAP) - provision of which the respondent was informed in the settlement agreement opening of the procedure - which establishes that if no allegations are made in the term foreseen on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered motion for a resolution.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation-General Data Protection Regulation, hereinafter RGPD), recognizes each Authori-

Control Authority, and as established in articles 47, 48.1, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), the Director of the Spanish Agency Data Protection is competent to initiate and resolve this procedure.

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."

II

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

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 tion, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization tion of access, collation or interconnection, limitation, suppression or destruction."

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

demonstrate that you have that consent.

In order for this treatment to be carried out lawfully, the following must be met:

established in article 6.1 of the RGD, which indicates:

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

tions:

a) the interested party gave their consent for the processing of their personal data

for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party

is part of or for the application at the request of the latter of pre-contractual measures;

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 another

Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers vested in the data controller;

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

by the data controller or by a third party, provided that said interests

interests do not prevail or the fundamental rights and freedoms of the interest

cases that require the protection of personal data, in particular when the interested

sado be a child.

The provisions of letter f) of the first paragraph shall not apply to the processing

zed by public authorities in the exercise of their functions.>>.

Article 7 of the RGD 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 is understood to mean any declaration of free, specific, informed and unequivocal will by which he accepts, either by means of a declaration or a clear affirmative action, the processing of data personal concerns."

III

In accordance with the available evidence, it is considered that the claimed filed a complaint with the Civil Guard that ended in trial for the crime of minor injuries and that, according to what was provided in the complaint, there was a recording by of the accused through a messaging group of the WhatsApp application with twelve recipients, after the attack, so the Civil Guard - post of ***LOCALIDAD.1 -, files this claim.

The known facts could constitute an infraction, attributable to the claimed, for violation of article 6.1 outlined, as there was no consent to

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/8

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

IV

The violation of article 6.1 of the RGPD is typified in article 83.5 of the

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

“The infractions of the following dispositions will be sanctioned, in accordance with the 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 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 point out:

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

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

a) the nature, seriousness and duration of the offence, taking into account the nature nature, scope or purpose of the processing operation in question, as well as the number number of interested parties affected and the level of damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to pa-

allocate 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,

gives an account of the technical or organizational measures that have been applied by virtue of the articles 25 and 32;

e) any previous infringement committed by the 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;

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/8

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, to what extent. gives;

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 to certification mechanisms
fication 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.
mind, through infraction.”

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

“Sanctions and corrective measures”, establishes:

"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 damage treatments.
personal cough.
- 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 subsequent to the commission of the investment.
fraction, which cannot be allocated to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when not mandatory, a data protection officer.
- 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 order to set the amount of the sanction of a fine to be imposed on the person claimed by the
infringement of the RGPD attributed to it, it is appreciated that the following concur
factors that operate to aggravate the unlawfulness of their conduct or their guilt:

- The nature, seriousness and duration of the offence, taking into account the nature,
scope or purpose of the treatment operation in question, as well as the
number of interested parties affected and the level of damages they have suffered.
suffered; It is the recording of a fight between a person who is drunk and his
diffusion to third parties with the intention of contempt and mockery.
- The intention or negligence in the infringement; intentionality is noted when recording
and spread the images of the fight between acquaintances.

The circumstance of the lack of connection of the
activity of the offender with the processing of personal data.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/8

Therefore, in accordance with the applicable legislation and having assessed the criteria for
graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

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

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

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

Once this resolution is enforceable, in accordance with the provisions of the
art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number
of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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

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

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

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

Interested parties may optionally file an appeal for reconsideration before the

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

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

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

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

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

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

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

aforementioned Law.

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

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

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

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es