 Procedure No.: PS/00409/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

to the following

BACKGROUND

FIRST: On September 26, 2019, the Director of the Spanish Agency

The Data Protection Officer agrees to initiate these investigative actions

in relation to the news that appeared in the media regarding the aggression

suffered by a minor under 14 years of age at the ***INSTITUTE.1 by some of its

mates, who proceeded to record the images of the aggression and spread them through

of a social network.

SECOND: 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 con-

control in article 57.1 of Regulation (EU) 2016/679 (General Protection Regulation)

tion of Data, hereinafter RGPD), and in accordance with the provisions of the Title

VII, Chapter I, Second Section, of Organic Law 3/2018, of December 5, of

Protection of Personal Data and guarantee of digital rights (hereinafter

LOPDGDD).

On September 27, 2019, the ***INSTITUTE.1 sends to this Agency

the following information and statements:

1. That the students who have confessed to having uploaded images to Instagram are:

A.A.A., born on 07/25/2005.

B.B.B., born on 05/02/2006

C.C.C., born on 11/19/2005

1. That according to what the Judicial Police informed them of the video posted on Instagram by

A.A.A. was made with the profile ***USER.1

2. That they do not know the Instagram profiles of the other videos that apparently

the other students have published.

On October 1, 2019, it is verified that, after a search of the

aggression in Google, in the first 50 search results videos appear and not-

tics in the following domains:

www.elperiodico.com

www.telemadrid.es

www.elmundo.es

www.antena3.com

www.periodistadigital.com

www.telecinco.es

www.elconfidencial.com

www.20minutos.es

www.abc.es

www.lavanguardia.com

www.miracorredor.tv

www.cope.es

www.heraldo.es

www.madridesnoticia.es

chainser.com

www.europapress.es

www.publico.es

okdiario.com

www.elperiodicodearagon.com

www.que.es

elpais.com

elespanol.com

www.larazon.es

www.ultimahora.es

elplural.com

news.rt.com

www.madridiario.es

www.laverdad.es

elmiradordemadrid.es

www.educatolerancia.com

elcorreoweb.es

madridpress.com

www.lainformacion.com

www.ondacero.es

www.elprogreso.es

www.huffingtonpost.es

www.bubble.info

www.vozpopuli.com

www.eldistrito.es

www.lavozdeasturias.es

www.diariodenavarra.es

www.extremadura7days.com

www.eldia.es

www.madridactual.es

www.estrelladigital.es

www.laopinioncoruna.es

www.meneame.net

On October 1, 2019, the existence of the profile is verified

***USER.1 on Instagram where the name of A.A.A. and the indicative of

"This account is private."

On October 7, 2019, it is verified that when performing a search

of the ***USER.1 profile on Instagram, you get the message “No re-

results”.

On October 8, 2019, the Superior Police Headquarters of Madrid (Di-

Directorate General of the Police) transfers to this Agency the following information and statements

festivities:

1. That according to the information sent to the Group of Minors of Madrid by the

guardian agents of the Municipal Police of Madrid in Report 374/2019:

a. The author and main broadcaster of the video is D.D.D., with date of birth

lie 03/05/2005. Broadcasting the recording later to Insta-

gram, social network through which there is certainty that it circulated.

b. That it can be stated with certainty that the video circulated on the social network

Instagram as has been verified from the witness's account

A.A.A. @***USER.1

On October 24, 2019, the Superior Police Headquarters of Madrid (Di-

Directorate General of the Police) sends this Agency the following information and statements

festivities:

1. That having carried out a user-level search in engines such as

Google and Bing, as well as hashtags with combinations of words like “pali-

za”, “institute”, “(…)”, “*** LOCATION.1”, only news has been found

in the media about the aforementioned event.

2. That by consulting the profile of the user @***USER.1 who uploaded it to Insta-

gram, said profile can no longer be found in the aforementioned social network, having

appeared.

On February 25, 2020, the ***INSTITUTO.1 sends to this Agency the

following information and statements:

1. That of the four minors referred to, A.A.A., B.B.B., C.C.C. and D.D.D., the latter

ma, D.D.D. is not enrolled in that center.

On July 1, 2020, the State Attorney General's Office sends this

Agency the following information and statements:

1. That a government file has been initiated with reference ***REF.1.

2. That the request for information has been transferred to the Provincial Prosecutor's Office

from Madrid.

On July 24, 2020, the State Attorney General's Office sends this

Agency the following information and statements:

1. That a conviction has been issued against the minors involved, the

which is firm

On October 19, 2020, the District Police Station of ***LOCATION.1

(Directorate General of the Police) sends this Agency the following information and statements

festivities:

1. DNI data and postal addresses of the parents of D.D.D. are provided;

Don F.F.F. and Doña G.G.G.. What about D.D.D. data is not obtained from the

itself, and the DNI may never have been issued.

THIRD: After the investigative actions carried out, it is found that A.A.A.

spread the video of the aggression of a minor in the ***INSTITUTO.1 through the social network

Instagram from your account @***USER.1.

FOURTH: In view of the reported facts, the Director of the Spanish Agency

of Data Protection, dated 12/14/20, agreed to initiate sanctioning procedure

against A.A.A., for the alleged infringement of article 6 of the RGPD typified in article

83.5.a), for illicit processing of personal data of a third party, imposing a

initial sanction of “WARNING”.

FIFTH: Notification of the initiation agreement to A.A.A., which is recorded as received on the date

December 21, 2020.

SIXTH: Once the initiation agreement has been notified, the person claimed at the time of this resolution

tion has not submitted a brief of allegations, so what is indicated is applicable

in article 64 of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, which in its section f) establishes that in case

of not making allegations within the stipulated period on the content of the initial agreement

ciation, it may be considered a resolution proposal when it contains a pro-

precise statement about the imputed responsibility, so we proceed to

dictate Resolution.

PROVEN FACTS

FIRST: On September 26, 2019, they appear in the media

cation images related to the aggression suffered by a minor under 14 years of age in the

***INSTITUTO.1, by some of his classmates, who proceeded to record the images

genes of aggression and spread them through a social network Instagram.

SECOND: The ***INSTITUTO.1, identified the students who uploaded the images to

Instagram, which confessed the facts.

THIRD: The video with the images of the aggression was published on the account of

Instagram ***USER.1, whose owner was A.A.A..

FOURTH: The Superior Police Headquarters of Madrid transfers to this Agency that, according to

According to the information sent by the Madrid Municipal Police, the author and main broadcaster

main of the video was D.D.D.,

FIFTH: The State Attorney General's Office informed this Agency of the fact that

that a conviction had been handed down against the minors involved, which is

sign.

FOUNDATIONS OF LAW

Yo

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 guarantees

Digital Rights Agency (hereinafter, LOPDGDD), the Director of the Spanish Agency

Spanish Data Protection Authority is competent to initiate and resolve this procedure.

unto

Article 63.2 of the LOPDGDD determines that: "The procedures

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

in 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 fact that is the object of this procedure is the diffusion carried out through

of the Instagram account whose owner was A.A.A. of the recording of the images of

a minor who was being assaulted by a group of minors; what constitutes

an infringement of data protection regulations.

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.

Article 4.2 of the RGPD defines "processing" as: "any operation or

set of operations carried out on personal data or personal data sets

personal, 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, in social networks supposes a treatment of personal data and, therefore,

Therefore, the person who does it has to rely on one of the legitimized causes-

ras indicated in article 6 of the RGPD.

In order for this treatment to be carried out lawfully, it must comply with:

It is 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 personal data

final for one or more specific purposes;

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

third party is a party or for the application at the request of the latter of pre-contractual measures;

c) the treatment is necessary for the fulfillment of an applicable legal obligation.

cable 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 per-

guided by the person in charge of the treatment or by a third party, provided that on said

interests do not override the interests or fundamental rights and freedoms of the

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

teresa be a child.

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

ment carried out by public authorities in the exercise of their functions.>>.

Article 7 of the LOPDGDD establishes the following:

"1. The treatment of the personal data of a minor only

may be based on your consent when you are over fourteen years of age.

The cases in which the law requires the assistance of the holders of the

parental authority or guardianship for the celebration of the act or legal business in which

context consent is obtained for the treatment.

2. The treatment of the data of minors under fourteen years of age, based on the

consent, it will only be lawful if the consent of the holder of parental authority or guardianship is recorded, with

the scope determined by the holders of parental authority or guardianship."

On the one hand, we do not know the age of the minor whose image was the subject of

recording and broadcast while being attacked, so it is unknown if she could

have given consent for such processing, or should have been given by the

holders of parental authority.

However, this sanctioning procedure is processed for the recording and

broadcast on the A.A.A. Instagram account, which, when the events occurred,

he had turned 14 years old.

As indicated, for the processing of personal data it is necessary

that there is a cause that legitimizes it, as has been pointed out, and that it must be collected

in article 6 of the RGPD above.

In this sense, it is included in Recitals 40 and following of the RGPD,

which indicate the following:

“(40) For the processing to be lawful, the personal data must be processed

with the consent of the interested party or on some other legitimate basis established

in accordance with Law, either in this Regulation or by virtue of another Law.

of the Union or of the Member States referred to in this Regulation,

including the need to comply with the legal obligation applicable to the data controller.

ment or the need to execute a contract in which the interested party is a party or with

purpose of taking measures at the request of the interested party prior to the conclusion of

a contract.

“(42) When the treatment is carried out with the consent of the interested party-

do, the data controller must be able to demonstrate that the data controller has given

consent to the processing operation…

In these cases, as in the case object of the claim, the only legal cause

gitimadora is usually consent, in general. It is the interested party itself, in this

case the person attacked, the one who is entitled to protect their personal data and

your image. And it is the person who records and uploads the images to a social network who

You must show that you have that consent.

The judgment of April 16, 2007 (STC 72/2007) of the Constitutional Court,

Regarding the dissemination of images, it indicates the following:

“This Court has had occasion to rule on complaints about

violations of the right to one's own image (art. 18.1 CE) in the SSTC 231/1988, of

December 2, 99/1994, of April 11, 117/1994, of April 17, 81/2001, of April 26

March, 139/2001, of June 18, 156/2001, of July 2, 83/2002, of April 22,

14/2003, of January 28, and 300/2006, of October 23.

In what is interesting to highlight here, from said doctrine it turns out that, in its constitutional dimension, the right to one's own image (art. 18.1 CE) is configured as a right of personality, which attributes to its holder the power to dispose of the representation of their physical appearance that allows their identification, which entails both the right to determine the graphic information generated by physical features that make it recognizable that it can be captured or have public dissemination, such as the right to prevent the obtaining, reproduction or publication of their own image by an unauthorized third party (STC 81/2001, of March 26, FJ 2.

However, what cannot be deduced from art. 18.1 CE is that the right to own image, as a limit of the actions of others, includes the unconditional right and without reservation to prevent the physical features that identify the person from being captured or spread. The right to one's own image, like any other right, is not a absolute right, and therefore its content is delimited by that of other constitutional rights and assets (SSTC 99/1994, of April 11, FJ 5; 81/2001, of

March 26, FJ 2; 156/2001, of July 2, FJ 6; and 14/2003, of January 28, FJ 4), notably the freedoms of expression or information [art. 20.1, a) and d), CE].

The determination of these limits must be made taking into consideration the teleological dimension of the right to one's own image, and for this reason we have considered that the interest of the person must be safeguarded in avoiding the recruitment or dissemination of your image without your authorization or without the existence of circumstances that legitimize this interference. That is why we have argued that "the capture and dissemination

of the image of the subject will only be admissible when the own —and previous— behavior of

that or the circumstances in which it is immersed, justify the decrease of

the reservation barriers so that the interest of others or the public prevails that they may

collide with that" (STC 99/1994, of April 11, FJ 5).

It turns out, therefore, that the right to one's own image (art. 18.1 CE) is

is delimited by the own will of the owner of the right that is, in principle,

who is responsible for deciding whether or not to allow the capture or dissemination of their image by

a third. However, as has already been pointed out, there are circumstances that can

lead to the enunciated rule yielding, which will happen in cases where there is

a public interest in capturing or disseminating the image and this public interest is

consider constitutionally prevailing the interest of the person in avoiding the

capturing or disseminating your image. Therefore, when this fundamental right enters

colliding with other constitutionally protected assets or rights, they must

weigh the different conflicting interests and, taking into account the circumstances

specific to each case, decide which interest deserves greater protection, if the interest of the

holder of the right to the image in which their physical features are not captured or disseminated without

your consent or the public interest in capturing or disseminating your image (STC

156/2001, of July 2, FJ 6)".

Likewise, the Judgment of the National High Court, of May 9, 2019,

resource 491/2017, affects the collision of fundamental rights and its necessary

weighting, indicating in its FOURTH Legal Basis the following:

<<As we have declared in cases similar to the present one (sts of May 15

of 2017 (R. 30/16); St. of June 19, 2017, (R.1842/15) and st. from July 18

2017, (R. 114/16), for the correct approach to the issues raised in the

present appeal, it should be underlined that the Constitutional Court, in the judgment

39/2016, of March 3, recalling what was already reasoned in judgment 292/2000,

declares that: "[...] the right to data protection is not unlimited, and although the Constitution does not expressly impose specific limits, nor does it refer to the powers public for its determination as it has done with other fundamental rights, not there is no doubt that they are to be found in the other fundamental rights and constitutionally protected legal assets, as required by the principle of unity of the Constitution [...]". Based on the foregoing, and in view of the approach of the parties, the issue raised in this proceeding is circumscribed to the weighing trial of rights and interests in confrontation. To this end, it is considered necessary, in the first place, to define the object and content of the rights at stake, just as this Chamber has done in previous occasions in which the same legal controversy has arisen.

Following the STC just cited, it must be stated that the fundamental right

to the protection of data enshrined in article 18.4 of the Spanish Constitution, to difference from the right to privacy of art. 18.1 CE, with whom he shares the goal to offer effective constitutional protection of private personal and family life, excluding the knowledge of others and the interference of third parties against your will, seeks to guarantee that person a power of control over their data personal, on its use and destination, with the purpose of preventing its illicit and harmful traffic for the dignity and rights of the affected. The right to data protection has, therefore, a broader object than that of the right to privacy, since the right fundamental to data protection extends its guarantee not only to privacy in its

dimension constitutionally protected by art. 18.1 CE, but to the sphere of

personal assets that belong to the sphere of private life,

inseparably linked to respect for personal dignity, such as the right to honour,

and to the full exercise of the rights of the person. The fundamental right to

Data protection extends the constitutional guarantee to those data that

are relevant or have an impact on the exercise of any rights of the

person, whether or not they are constitutional rights and whether or not they are related to honor,

ideology, personal and family intimacy to any other constitutionally

protected. In this way, the object of the fundamental right to data protection

It is not reduced only to the intimate data of the person, but to any type of data

personal, intimate or not, whose knowledge or use by third parties may affect

their rights, whether fundamental or not -such as those that identify or allow the

identification of the person, being able to serve for the preparation of their ideological profile,

racial, sexual, economic or of any other nature, or that serve any other

utility that in certain circumstances constitutes a threat to the individual

because its object is not only individual privacy, already protected by art. 18.1 EC,

but personal data. Consequently, it also reaches those

public personal data that, by virtue of being public, being accessible to the

knowledge of anyone, do not escape the power of disposition of the affected party because

This is guaranteed by your right to data protection. As regards the right to

freedom of expression, in light of the doctrine of the Constitutional Court (SSTC

23/2010, of April 27, and 9/2007, of January 15) enshrined in article 20 of the

Constitution, includes, along with the mere expression of thoughts, beliefs,

ideas, opinions and value judgments, criticism of the conduct of another, even when the

itself is bland and can annoy, worry or upset the person it addresses, since

this is required by pluralism, tolerance and a spirit of openness, without which

there is a democratic society.

Freedom of expression is broader than freedom of information as it does not

to operate in the exercise of the former the internal limit of veracity that is applicable to it,

what is justified in that it is intended to present ideas, opinions or value judgments

subjective that do not lend themselves to a demonstration of their accuracy, nor by their nature

abstract are susceptible to proof, and not to establish facts or affirm objective data.

However, this difference does not prevent affirming that both constitute rights.

rights held by all natural persons and that can be exercised at

through word, writing or any other means of reproduction, without prejudice to

that when such freedoms are exercised by information professionals through

of an institutionalized vehicle for the formation of public opinion, its degree of

protection reaches its maximum level (STC 165/1987, of October 27). Definitely,

the recognition of freedom of expression guarantees the development of a

free public communication that allows the free circulation of ideas and value judgments

inherent to the principle of democratic legitimacy. In this sense, it deserves special

constitutional protection the dissemination of ideas that collaborate in the formation of the

public opinion and make it easier for citizens to freely form their opinions and

participate responsibly in public affairs. However, just like

happens with the other fundamental rights, the exercise of the right to freedom

expression is subject to constitutional limits that the Constitutional Court has

progressively outlined. Thus, it does not cover the presence of phrases and expressions

libelous, outrageous and offensive unrelated to the ideas or opinions expressed

expose and, therefore, unnecessary for this purpose, nor does it protect the disclosure of

facts that are but simple rumours, inventions or insinuations devoid of

foundation, nor does it give shelter to snares or insults, since it does not recognize a

pretended right to insult. Along with this, the expansive trend of freedom of

expression also finds its limit in respect for the normative content

guaranteed by other fundamental rights, whose affectation is not necessary

for the constitutional realization of the right. Delimitation that can only be done

through the proper weighting of the conflicting constitutional values, among

which highlights the guarantee of the existence of public opinion, indissolubly

coupled with political pluralism, it should be remembered that, as recognized by the

paragraph 4 of art. 20 CE, all the freedoms recognized in the precept have their

limit on the right to honor, privacy, self-image and protection of the

youth and childhood, which fulfill a "limiting function" in relation to these

freedoms. Therefore, the protection of these other rights is weakened

constitutional rights recognized by article 20.4 CE against the freedoms of expression

and information, when exercised in connection with matters that are of interest

general, by the matters to which they refer and by the people who intervene in them

and contribute, consequently, to the formation of public opinion, as occurs

when they affect public persons, who exercise public functions or are

involved in matters of public relevance, thus forced to bear a certain

risk that their subjective rights of personality will be affected by

opinions or information of general interest (SSTC 107/1988, of June 8,

20/2002, of January 28, 160/2003, of September 15, 151/2004, of September 20

September, and 9/2007, January 15).>>

In the case analyzed, there is a collision between the right of

information that A.A.A. to broadcast the recording of the minor assaulted

through your Instagram account and the right to protection of personal data

of the young woman attacked. When considering the interests of the young woman attacked, we must

determine that your right to the protection of your personal data prevails.

IV

Article 3 of Law 39/2015 grants legal capacity to minors

age “for the exercise and defense of those of their rights and interests whose

performance is permitted by law without the assistance of the person

who exercises parental authority, guardianship or curatorship”. In what interests us here, the age

to grant consent for the processing of personal data, as well as to

exercise rights in terms of data protection, without the assistance of the owner of

parental authority, is 14 years old, therefore, in this case the minor has that

capacity to act and, consequently, he can be charged with an infringement of the

data protection regulations.

In this same sense, the Administrative Court of Navarra, in its

RESOLUTION number 00743/15, March 24, 2015 states the following in the

Second Law Basis:

<<SECOND.- Liability of minors for administrative infractions.

The appellants invoke the doctrine contained in Resolution number 949, of

March 31, 2014, of this Court. However, as the City Council alleges, the

It referred to a minor under 14 years of age. In said resolution, the following were made:

considerations:

“In effect, the current criminal law sets an age below which the per-

sona is unimputable (14 years old), and establishes an age bracket from 14 and under

18 years old, respectively, to whom the Penal Code for adults should not be applied.

but a specific one enacted for them, with a clearly educational purpose, and a

third section or step from the age of 18 and under 21, considered

totally attributable, for all purposes, but depending on the seriousness of the facts

committed, and given his youth, his newly acquired maturity, lack of life experience,

prolongation of adolescence, for reasons of criminal policy, in some cases

must be considered in the previous section (from 14 to 18 years old) to apply

carles the same code or criminal law.

And it is that, as explained by Organic Law 5/2000, of January 12, on Responsibility

Criminal Responsibility of Minors, in its Statement of Motives, "4. Article 19 of the current

the Penal Code, approved by Organic Law 10/1995, of November 23, sets the

the criminal age of majority is eighteen years and requires the express regulation

of the criminal responsibility of minors of said age in an independent Law

tea. Also to respond to this requirement, this Organic Law is approved, if

Well, the provisions of this point in the Penal Code must be complemented in a

double meaning. First, by firmly establishing the principle that responsibility

The penal bility of minors presents, compared to that of adults, a primordial character

of educational intervention that transcends all aspects of its legal regulation.

ca and that determines considerable differences between the sense and the procedure of the

sanctions in both sectors, without prejudice to the guarantees common to all justice-

ble. Second, the age limit of eighteen years established by the Code

Criminal to refer to the criminal responsibility of minors requires another limit

minimum from which the possibility of demanding that responsibility begins and that

has materialized in the fourteen years, based on the conviction that the infractions

committed by children under this age are generally irrelevant and that, in

the few cases in which they can cause social alarm, are sufficient

to give them an equally adequate response in the family and care spheres

civil, without the need for the intervention of the sanctioning judicial apparatus of the State".

And later add the following:

"10. In accordance with the principles indicated, it is established, unequivocally, the limit

limit of fourteen years of age to demand this type of sanctioned responsibility-

to minors of criminal age and they differ, in the scope of application of the Law

and the graduation of the consequences for the acts committed, two sections, of each

fourteen to sixteen and seventeen to eighteen years old, to present one and another different group.

characteristic differences that require, from a scientific and legal point of view, a

differentiated treatment, constituting a specific aggravation in the section of the

over sixteen years of age the commission of crimes characterized by violence,

intimidation or danger to people".

And, therefore, article 1 of said Organic Law, entitled "General Declaration",

prescribe the following:

"1. This Law will be applied to demand the responsibility of the elderly

fourteen years of age and under eighteen for the commission of acts typified as

crimes or misdemeanors in the Criminal Code or special criminal laws.

2. The persons to whom this Law applies shall enjoy all the rights

rights recognized in the Constitution and in the legal system, particularly

in Organic Law 1/1996, of January 15, on the Legal Protection of Minors, as well

as in the Convention on the Rights of the Child of November 20, 1989 and in

all those regulations on the protection of minors contained in the valid Treaties

celebrated by Spain".

Well, based on the above, it is considered that, transferring the principles

pios of criminal law to sanctioning administrative law, cannot be considered

responsible for an administrative offense to a 13-year-old person (a "child", in pala-

bras of the Statement of Motives of the aforementioned Organic Law)»…

Unlike what happens in the criminal field, there is no administrative law

sanctioning treatment of minors. Although the doctrine comes claiming

I order a new sanctioning administrative law for minors who

adopt criminal legal dogmatics to the extent possible and contemplate sanctions

adequate measures for minors, more effective sanctions with a clearly educational

as is already foreseen in the criminal sphere, for the time being the laws and regulations that

classify administrative infractions and establish the corresponding sanctions not

They usually make a distinction between adults and minors. In general,

therefore, we must understand that those over 14 years of age can be charged with such

violations, except rule that tacitly or expressly provides otherwise...

There are in our legal system some other laws that take for granted

put the responsibility of minors. Thus, articles 24, 25 and 26 of the Or-

Organic 3/2013, of June 20, on the protection of the health of the athlete and the fight against

doping in sports activity, establish the sanctions for very serious infractions

you see but they add that "when a minor is involved in the aforementioned behaviors

of age, or in case of recidivism, the pecuniary sanction may only have

accessory nature and will be sanctioned with a fine of 40,000 to 400,000 euros". The article

50.3 of Law 11/2007, of October 26, on Libraries of the Basque Country and the article

54.3 of Law 16/2003, of December 22, of the Andalusian System of Libraries and

Documentation Centers, attribute to parents, guardians or people who exercise the

saves the minor user the subsidiary responsibility of the penalties

cuniarias that are imposed.

The Judgment of the Superior Court of Justice of Madrid of July 3,

2001 (JUR 2001/307309) makes the following considerations in this regard:

"The first substantive allegation of the plaintiff is that it was a me-

under 18 years of age, and over 16, at the time of committing the offence, so

there is a cause of administrative incompetence, and in this regard it can be said that the

Article 30 of Law 30/1992, on the Legal Regime of Public Administrations and

of the Common Administrative Procedure determines that minors have

capacity to act before said Public Administrations for the defense of their interests.

so that they are also, therefore, trained to take on the responsibility

administrative liability arising from their acts; the fact that coming of age pe-

nal is set at 18 years, it does not deprive the administrative responsibility, which is not

has a punitive character but of protection of public interests, has to be assumed

by those who have the capacity to act before the Administration.

Administrative liability, whether due to fraud or negligence, and even

simple negligence, is widely recognized by our jurisprudence, and even

expressly in article 130.1 of the aforementioned Law 30/1992, sufficing the simple inob-

servicing".

The municipal ordinance on the protection of public spaces and conduct

Zizur Mayor civic does not contain any limitation in this regard. Its article 40,

responsible persons, provides that "they shall be directly responsible for the infractions

to this Ordinance the material authors of the same", and adds in its section

3:

"In general, individuals will be jointly and severally liable for damages.

physical or legal entities of a private nature on which the legal duty of pre-

come the administrative offenses that others may commit.

In the event that the person responsible is a minor or attends that

no legal cause of non-imputability, the parents, guardians or those who have

entrusted legal custody".

Therefore, we must consider that the responsibility for the commission of the

offenses typified by the Ordinance is required from the age of 14 and that, only

mind for the purpose of responding to damages committed by minors under 18 years of age,

it is possible to demand the solidary responsibility of their parents or guardians. In the present case,

the challenged act is the imposition of an administrative sanction and does not include the

requirement of responsibility for the damages that, where appropriate, the City Council could

require in a separate file. Therefore, it is in accordance with the law that

imposed the sanction on its author.>>

In application of the aforementioned fundamentals, A.A.A. is responsible for treating

storage of data of the minor attacked by disseminating her image, the regulation being applicable

data protection motive.

v

A.A.A., in its capacity as data controller, in accordance with article 6

RGPD, was obliged to have a cause of legitimacy of those indicated in the men-

mentioned article, having totally and absolutely dispensed with it.

In short, the recording and subsequent dissemination of the images of the minor aggression dida does not have any legitimizing cause as required by article 6 of the RGPD.

The data processing carried out violates article 6 of the RGPD conduct that

It is subsumable in article 83.5 of the RGPD that provides: "The infractions of the dis-

following positions will be sanctioned in accordance with section 2, with administrative fines

20,000,000 Eur maximum or, in the case of a company, a

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

previous financial year, 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;

For the mere purposes of prescription, article 72.1.b) of the LOPDGDD qualifies

very serious “b) The processing of personal data without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the Regulation

(EU) 2016/679.”. The limitation period for very serious offenses provided for in the

Organic Law 3/2018 is for three years.

Article 58.2 of the RGPD establishes:

SAW

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

listed below:

a) (..)

b) sanction any person responsible or in charge of treatment with a warning

when the treatment operations have violated the provisions of this

Regulation;

c)...

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

of the measures mentioned in this section, depending on the circumstances of

each individual case".

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation

with what is stated in Considering 148:

"In the event of a minor offence, or if the fine likely to be imposed constituted

would place a disproportionate burden on a natural person, rather than a measurable sanction.

Due to a fine, a warning may be imposed. However, special attention must be paid

attention to the nature, seriousness and duration of the infraction, to its intentional nature

to the measures taken to mitigate the damages suffered, to the degree of res-

responsibility or any relevant prior violation, to the manner in which the authority

of control has been aware of the infraction, to the fulfillment of or-

sentenced against the person responsible or in charge, adherence to codes of conduct and

any other aggravating or mitigating circumstance."

In the present case, considering the special circumstances that concur in the person responsible for the infringement and making a broad interpretation of the criterion that inspires Recital 148 of the RGPD, according to which when the fine that proves possibly imposed constituted a disproportionate burden, it is estimated that due to the Violation of article 6 of the RGPD proceeds imposes the sanction of warning.

Likewise, it is appropriate to impose the corrective measure described in article 58.2.d) RGPD and order the claimed party not to process personal data again (such as, for example, the recording and dissemination of videos) without having legitimacy for it; for example, the consent of those affected is one of the legitimizing causes of treatment, under article 6 of the RGPD.

It is considered that the claimed party has violated article 6 of the RGPD by recording and spread the images of a minor who was being assaulted without cause legitimacy for it. This conduct is typified in article 83.5.a) of the RGPD and Such conduct is sanctioned with a warning and with the corrective measure already indicated.

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

RESOLVES:

NOTICE: To A.A.A., for the violation of article 6 of the RGPD.

REQUIRE: A.A.A., in accordance with the provisions of article 58.2 d) of the RGPD that it does not carry out any data processing again without having some legal cause. cheater of such treatment.

THIRD: NOTIFY this resolution to A.A.A.

In accordance with the provisions of article 50 of the LOPDPGDD, the pre-

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 LOPDPGDD, and in accordance with the provisions of article 123 of the LPA-CAP, the interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of one month counting from the day following the notification of this resolution or directly contentious-administrative case before the Contentious-administrative Chamber of the Au-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 Jurisdiction Contentious-administrative diction, within a period of two months from the day following 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-

through the Electronic Registration of 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency