

Procedure No.: PS/00104/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On October 8, 2018, entry is registered in this Agency

Spanish Data Protection Claim formulated by Mr. A.A.A., (in

hereinafter, the claimant), against the Popular Party of ***LOCALIDAD.1 and the Partido

Popular of ***COMUNIDAD.AUTONOMA.1 for the dissemination on its web pages and

social networks of data referring to salaries, accruals, reductions, retentions of

personal income tax, etc. concerning the following councilors of the Government of the City Council of

the Villa of ***LOCATION.1:

Ms. B.B.B., of the Regionalist Party, hereinafter B.B.B.

Ms. C.C.C., of the Regionalist Party, hereinafter C.C.C.

Don D.D.D., of the Regionalist Party, hereinafter D.D.D.

Don E.E.E., of the Socialist Party, hereinafter E.E.E.

The claimant attaches a screenshot dated May 4, 2018

showing a news published on 03/29/2016 on the website ***URL.1. informing

on the presentation of a motion by the PP of ***LOCALIDAD.1 to

discuss the reduction of the remuneration of the entire Municipal Corporation.

This publication includes two images, one of them corresponds to

with the payroll for the month of April 2015 of Don F.F.F., (hereinafter F.F.F.). East

sample document, in addition to the information corresponding to the quantities

particularized corresponding to the different concepts that make up that payroll,

the DNI data, Social Security affiliation number, Contribution Group and Date of seniority of that person.

The other, under the title "Annual Concept Month Report (Period January to December 2015)", details the monthly amounts and annual totals corresponding to a series of concepts associated with the remuneration and withholdings of the payroll of the claimant and Don D.D.D. of the year 2015.

The complainant points out that in the following link the image of payroll: ***URL.2.

Likewise, printing of two captures corresponding to two photographs disseminated through the "Publications" section of the website of the "Popular Party *** LOCALITY.1" whose content corresponds to the two images included in the previously reviewed publication.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

-

elective.

-

2/19

SECOND: In accordance with article 9.4 of Royal Decree-Law 5/2018 (BOE

07/30/2018) dated October 26, 2018 said claim was transferred to

POPULAR PARTY, (hereinafter, the claimed party), granting it a period of one month

so that, among other things, it could send this Agency information regarding the causes that motivated the facts exposed in the claim and any other that it considered relevant in this regard.

THIRD: On November 20, 2018, this Agency received,
response of the respondent indicating, in summary, the following:

The claimant is a councilor on the PSOE list, occupying a post

Taking into account the provisions of articles 3.a and 26.2 of the Law

19/2013, of December 9, on Transparency, Access to Public Information and Good

Government said Law, and given the relevant constitutional role that the parties play and

in their capacity as recipients of public subsidies and aid of a

public, regional, provincial and municipal political parties, for

residual application of article 4 of the LTAIBG, are obliged to publish their own

accounts.

-

The action of the defendant in the City Council of ***LOCATION.1

fulfills two functions:

a)

Need for transparent and general knowledge of remuneration

of the councilors of the aforementioned City Council, to which the citizens have the right.

b)

Need to reduce, in the judgment of the respondent, the remuneration that

effectively received by said Councillors, regardless of the party or

coalition to which they belong.

- Regarding the photograph of the payroll they indicate that it corresponds to a
councilor of the claimed

- Regarding the photograph of the lists corresponding to the remuneration
that the editors perceive as such in the City Council of Villa de

*** LOCATION.1 , it is indicated that "Its only mention is the public remuneration that
are allocated in the municipal budget for the performance of their duties

elective.”, adding that “there is no other specific mention nor is data provided on personal character of the claimant, but exclusively on the need to carry out carried out a political control of the salaries of said councilors, they expose what they charge each from the public treasury, for the purposes of their political control, on the basis of the function assigned to the different political parties in use of their constitutional powers”

- It concludes by pointing out that the control of the political activity assigned to the political parties in the opposition, the obligations derived from the regulations of transparency in the public function and the right to freely communicate and disseminate truthful information support the action of the defendant, which is legitimate and adjusted to law, not having, therefore, existed illegitimate interference in the privacy of the claimant as it is data related to their public perceptions that must be known in its entirety by the citizens.

Attached are instances, copies of municipal acts and press clippings that show that the existing debate on the remuneration of Councilors not only

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/19

extends to strictly political spheres, but also occurs in the Local Corporation and in the media.

FOURTH: In accordance with article 65 of Organic Law 3/2018, of 5

December, Protection of Personal Data and Guarantee of Digital Rights,

(hereinafter, LOPDGDD), dated December 17, 2018, the Director of the

Spanish Agency for Data Protection agreed to admit the claim for processing

submitted by the claimant.

FIFTH: In accordance with the provisions of article 67 of the LOPDGDD, and within the of the investigative actions carried out to clarify the facts, dated July 24, 2019, the link provided by the claimant,

verifying that through the web page ***URL.1 continues spreading the news dated March 29, 2016 with the two images that show the information of a personal nature outlined in the Antecedent of Fact First,

It is observed that when clicking on the image that shows the payroll of Don F.F.F. appears overprinted "PAYROLL COUNCILOR OF THE PP DURING THE PREVIOUS LEGISLATURES".

In turn, when clicking on the image that shows the information contained under the title "Annual Concept Month Report (Period January to December 2015)", appears overprinted "THIS IS WHAT THE COUNCILMEN OF THE CURRENT PRC-PSOE TEAM"

SIXTH: On July 29, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 5.1.f) of the RGPD, typified in the Article 83.5 of the RGPD.

In said agreement, for the purposes set forth in article 58.2.d) of the RGPD and

In view of the elements of judgment available at that time, the corrective measures that could be ordered to the defendant in the resolution that, in its case, could fall, also indicating the term in which they would have to be adopted and

justify compliance.

The aforementioned act was notified to the respondent on July 30, 2019.

SEVENTH: After requesting an extension of the term that was granted for formulate allegations, dated September 19, 2019, it is registered in this Agency written allegations of the claimed in which, in addition to ratifying in the statements made above, the following is argued:

- Prescription of the presumed infraction after a period of more than the three years established for very serious infractions in article 72.1 of the Organic Law 3/2018, of December 5, in its relationship with article 83.5 of the RGPD, to which is added that there has been no cause for interruption of the indicated prescription since the news was published in accordance with the provisions of the Article 75 of the aforementioned Organic Law 3/2018.

-

It is stated that “given the relevant constitutional role that the parties play, together with the duty to, in their capacity as recipients of public subsidies and aid of a public nature, regional and provincial political parties,

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

4/19

as well as municipal, are bound by the residual application of article 4 of the LTAIBG, to publish their own accounts, with all that this entails, generating in other cases the undesirable effect of a lack of compliance with the LTAIBG and the regulation already mentioned.

-

The functions to which the performance of the claimed revealed in the response made in November 2018, arguing in this regard that "a Councilor must know and must assume that the exercise of public functions, and collect their remuneration charged to the aforementioned treasury public, entails rules of transparency that confront their right to intimacy, owing this to yield to the need for generalized knowledge of the citizens, who, as has been expressed previously, are not can hide the fact of such compensation and the justification of how it is produced, although this entails personal data of the councilors.

Consequently with this (...) in the published news the payroll is expressed of the claimant councilor, likewise, the remuneration received by the mayors as such the City Council of ***LOCALIDAD.1, and it is indicated that its only mention is the public remuneration assigned in the municipal budget for performance of his elective office, adding that there is no other specific mention or Personal data of the claimant is provided. The published information does not can be manipulated, since citizens would not understand that the payroll of a councilor was manipulated or misrepresented. It should be interpreted as a document public of the City Council, where the mention of certain circumstances that affect said Edil, with the fact that it is known effectively the scope of their remuneration, and its justification."

-

Non-existence of the imputed infraction, defending the work carried out as legitimate and adjusted to law based on the same arguments that are stated in the document registered on November 20, 2018.

EIGHTH: On January 15, 2019, the sanctioning procedure is incorporated printout of the result obtained through the Google Chrome browser

when accessing, on that same date, the address ***URL.3, (hereinafter, the address web), confirming that the information contained in the news continues to appear entitled "The PP of ***LOCALIDAD.1 will request a reduction in the remuneration of the entire Corporation", published since 03/29/2016 on said website.

NINTH: On January 21, 2020, the Instructor of the Procedure formulated resolution proposal in the sense that by the Director of the Spanish Agency of Data Protection was imposed on the claimed party, in accordance with the provisions of article 58.2.b) of the RGPD, a sanction of WARNING for an infringement of the article 5.1.f) of the RGPD, typified in article 83.5.a) of the RGPD.

Likewise, it was proposed that if the correction of the irregular situation prior to the issuance of the appropriate resolution, the Director of the Spanish Agency for Data Protection ordered the respondent, in accordance with the provisions of article 58.2.d) of the RGPD, "which in general appropriate technical and organizational measures are taken to ensure the confidentiality of the personal data included in the payroll of the members of municipal corporations, also avoiding the dissemination to third parties of the personal data contained in the payroll issued by the Town Halls to name of those councilors, as well as the disclosure of any other

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

5/19

documentation and/or information linked to the amounts of the different items that make up these payrolls. Likewise, and with regard to the case analyzed

The information object of the claim must be eliminated from the web pages and networks

societies in which it has been included.”

Said measures would have to be adopted, where appropriate, within a period of one month.

computed from the day following that on which the resolution was notified

sanctioning, having to provide the means of evidence accrediting its

compliance.

The aforementioned proposed resolution was notified to the respondent on the date

January 23, 2020.

TENTH: On February 3, 2020, entry is registered in this Agency

brief of allegations in which the respondent requests the file of the procedure with

based on the following arguments:

- Reiteration of the substantive reasons supported throughout the processing of the process.

- Adoption of the pertinent organizational measures in relation to the information object of the procedure. For supporting purposes, the respondent provides certification issued, dated January 29, 2020, by the Regional Manager of the claimed in ***AUTONOMA.COMMUNITY.1 in which it is stated that, on the 24th of January 2020, the news and documents attached to the same as under the title "The PP of ***LOCALIDAD.1 will request the reduction of the remuneration of the entire Corporation" of March 29, 2016, appeared in the link ***URL.5.

- Pointed out that the news object of the publication was linked to the article that introduced it and with the documents of a public nature that accompanied, as were the payrolls paid by the public treasury of the locality in question, the respondent states that "the proposed resolution must be argued that it is requested that the content of said documents be modified by proceeding to the deletion of part of its content. And this without entering into controversy about it should

valued up to the extent of the citizen's right to know the amounts that their municipal politicians are paid, and the reasons why. In this sense it must also valued taking into account the circumstances that affect the context of said publication, if it is possible to limit the knowledge that said citizens have of said news, proceeding to a kind of prior censorship of the supporting documentation of which you complain, even if this requires the sacrifice of the personal data of the owner of the themselves, against the general right to information when it comes precisely to disseminate the scope and content of the indicated news. In another case, we could encounter the paradox of considering that the right to data protection of article 18.4 C.E. has no limits, in the face of the intricacies of the situation in relation to the constitutional right to free and truthful information, without having to manipulate the documents from which the information emanates, and to which precisely, refers to the press release and the background article in relation to it in which all of this is based.”

-

Lack of intentionality in relation to the disclosure of personal data of the claimant, being the main objective of the publication made, the obligation to development of political control, which in his opinion should prevail in the necessary

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

6/19

public information regarding the reduction of payroll and fees of Councilors of the City Council of the Villa of ***LOCALIDAD.1, reason for which it requests to have in consideration of the provisions of article 76.2 of the LOPDGDD in relation to the

article 83.2 k of the RGPD.

ELEVEN: On February 13, 2019, the procedure is incorporated

sanctioning impression of capture of the result obtained through the search engine

Google Chrome when trying to access, on the same date, the address ***URL.3,

whose result was "Page not found".

PROVEN FACTS

First: On October 8, 2018, it is registered at the Agency

Spanish Data Protection Claim made by the claimant (Mr.

FE.E.E.) against the Popular Party of ***LOCALIDAD.1 and the Popular Party of

***AUTONOMA.1 COMMUNITY for disseminating on its web pages and social networks

personal data referring to concepts corresponding to the payroll of Ms.

B.B.B., Mrs. C.C.C., Mr. D.D.D. and Don E.E.E., all of them Councilors of the Government of the

Town Hall of ***LOCATION.1.

Second: The claimant attached the following documentation to his claim:

a) printout of screenshot with the result obtained when visiting, with

date May 4, 2018, the web address ***URL.6, where from March 29

"The PP of

of 2016, the respondent keeps published the news titled

***LOCATION.1 will request a reduction in the remuneration of the entire Corporation", in the

that is informed about the presentation of a motion by the PP of

***LOCATION.1 to discuss the reduction of the remuneration of that Corporation

Municipal. This news included images of the documents that are listed below

Are detailed:

- Payroll issued in the month of April 2015 by the City Council of Villa de

***LOCATION.1 to Councilor Don F.F.F., who together with the amounts

corresponding to the different remunerative and/or deductive concepts that the

formed showed the following personal data concerning said

Councilor: name and surnames, NIF, Social Security affiliation number,

Category (Councillor), Listing Group and Seniority Date of that person.

- One page of the "Annual Concept Month Report (Period January to December

2015)", dated 02/19/2016, detailing the monthly and total amounts

corresponding to a series of concepts associated with the

remuneration and withholdings from the payroll of the claimant and Mr. D.D.D.

during the year 2015.

b) Capture printout of several images obtained on October 8

of 2018 in the "Publications" section of the Facebook page of the "Party

Popular ***LOCALIDAD.1", showing images of the two documents

previously outlined as well as a second page of the "Annual Report

Concept Month (Period January to December 2015)", dated 02/19/2016, which

relates the monthly amounts and annual totals corresponding to the different

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/19

Concepts associated with the remuneration and withholdings of the payroll of Ms. B.B.B.

and Ms. C.C.C. during the year 2015. In the images corresponding to the payroll

Facebook 2018 appears.

Third: With dates July 24, 2019 and January 15, 2020 from the AEPD

access the web address outlined in letter a) of the second proven fact above,

verifying that through it continues to spread the information of

personal character contained in the documents included in the news published in

said link, described in point a) of the above proven fact.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 55.1, 56.2 and 58.2 of the Regulation (EU)

2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the

protection of natural persons with regard to data processing

personal information and the free circulation of these data (General Protection Regulation

of Data, hereinafter RGPD) recognizes each control authority, and according to what

established in articles 47 and 48.1 of Organic Law 3/2018, of December 5, of

Protection of Personal Data and guarantee of digital rights (hereinafter

LOPDGDD), the Director of the Spanish Data Protection Agency is

competent to resolve this procedure.

II

Article 4 of the RGPD, under the heading "Definitions", provides that: "For the purposes

of this Regulation shall be understood as:

1) "personal data": any information about an identified natural person or

identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person

whose identity can be determined, directly or indirectly, in particular by

an identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

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

2) "processing": any operation or set of operations carried out

about personal data or sets of personal data, either by procedures

automated or not, such as the collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use,

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

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

7) «responsible for the treatment» or «responsible»: the natural person or legal entity, public authority, service or other body which, alone or jointly with others, determine the purposes and means of the treatment; if the law of the Union or of the Member States determines the purposes and means of processing, the data controller treatment or the specific criteria for their appointment may be established by the Law of the Union or of the Member States; >>

In accordance with these definitions, the processing of personal data identification (names, surnames, and, where appropriate, NIF number and affiliation to the social security), as well as the remuneration concepts corresponding to the same published in the web address and the Facebook page studied
www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

8/19

constitute a processing of personal data, in respect of which the
The data controller must comply with the principles relating to the treatment, among which is the principle of confidentiality contained in Article 5.1.f) of the RGPD.

III

In the present case, the defendant is charged with an infraction of article 5.1.f) of the RGPD, precept that under the heading "Principles related to treatment", establishes that:

“Personal data will be:

(...)

f) treated in such a way as to ensure adequate security of the

personal data, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of measures appropriate technical or organizational (<<integrity and confidentiality>>)"

For its part, under the heading "Duty of confidentiality", article 5 of the LOPDGDD provides that:

- "1. Those responsible and in charge of data processing as well as all people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.
2. The general obligation indicated in the previous section will be complementary of the duties of professional secrecy in accordance with its applicable regulations.
3. The obligations established in the previous sections will remain even when the relationship of the obligor with the person in charge or person in charge had ended of the treatment."

Said conduct materializes in the dissemination by the defendant through the web address ***URL.6 and the Facebook page of the Popular Party of ***LOCATION.1 of documentation of a personal nature of members of the Corporation of the City Council of the Villa of ***LOCATION.1 whose disclosure exceeds the coverage offered by the principle of transparency based on the condition of councilors of the holders of the disclosed data, since the payroll of April 2015 and the published lists include information such as the DNI and number of the Social Security of Don F.F.F. or quantities corresponding to different remuneration concepts that make up the payroll for the year 2015 of the claimant, Mr. DDD , Ms. B.B.B. and Ms. C.C.C., including the name and surname of the aforementioned people, information that, in what refers to the outlined web address, was still accessible to anyone as of January 15, 2020.

The defendant maintains that the imputed infraction has prescribed taking into account

Note that between March 29, 2016, the date of the publication in which

would have produced the publication of the news, and on July 29, 2019, the date of the

agreement to initiate the sanctioning procedure, a period of more than

the three years established for very serious infractions in article 72.1 of the

Organic Law 3/2018, of December 5, in relation to article 83.5 of the RGD,

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

9/19

adding that in accordance with the provisions of article 75 of the aforementioned Law

Organic 3/2018 there has been no cause for interruption of the indicated

prescription since the news was published.

The aforementioned articles of the LOPDGDD provide:

“Article 72. Infractions considered very serious.

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679”-

“Article 75. Interruption of the prescription of the infraction.

“The prescription shall be interrupted by the initiation, with the knowledge of the interested party, of the

sanctioning procedure, restarting the prescription period if the file

sanctioning party is paralyzed for more than six months for reasons not

attributable to the alleged offender.

When the Spanish Data Protection Agency holds the status of main supervisory authority and the procedure provided for in article 60 of Regulation (EU) 2016/679 will interrupt the prescription formal knowledge by the interested party of the start-up agreement project that is submitted to the authorities of control interested.”

For its part, sections 1 and 2 of article 30 of Law 40/2015, of 1 October, of the Legal Regime of the Public Sector have in terms of prescription of the infractions: (The underlining is from the AEPD)

“Article 30. Prescription

1. The infractions and sanctions will prescribe according to the provisions of the laws to establish them. If they do not set statute of limitations, very Serious ones will prescribe after three years, serious ones after two years and minor ones after six months; the sanctions imposed for very serious offenses will prescribe after three years, the imposed for serious offenses after two years and those imposed for minor offenses after one year.

2. The limitation period for infractions will begin to run from the day on which the offense was committed. In the case of continued violations or permanent, the term will begin to run from the end of the offending conduct.

The prescription shall be interrupted by the initiation, with the interested party's knowledge, of an administrative procedure of a sanctioning nature, restarting the term of prescription if the sanctioning file was paralyzed for more than a month for reasons not attributable to the alleged perpetrator.”

In relation to the alleged issue, it should be noted that the infringement of which the defendant is held responsible derived from the publication of the news entitled "The PP of *** LOCATION.1 will request the reduction of the remuneration of the entire Corporation" in the web address ***URL.6 participates in the nature of the so-called

permanent infractions, in which the consummation is projected in the shortest time

beyond the initial fact and extends, violating the data protection regulations,

during the entire period of time in which the object data is processed

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/19

irregular studied. In the present case, despite the fact that on the date on which the

infringing conduct the applicable norm was the Organic Law 15/1999 of Protection of

Personal Data (hereinafter, LOPD), the regulations that result from

application is the one that is in force when the infraction is consummated because it is in that

moment when it is understood committed.

The Supreme Court (TS) has ruled on the rule to be applied

in those cases in which the infractions are prolonged in time and have

There has been a regulatory change while the offense was being committed. The Judgment of the TS of

04/17/2002 (Rec. 466/2000) applied a provision that was not in force in the

initial moment of commission of the infraction, but yes in the later ones, in which

the offending behavior continued. The Judgment examined a case that dealt

on the sanction imposed on a Judge for breach of her duty to abstain

in preliminary proceedings. The sanctioned alleged the non-validity of article 417.8

of the LOPJ when the events occurred. The STS considered that the infraction had been

been committing from the date of initiation of the Preliminary Proceedings until the

moment in which the Judge was suspended in the exercise of her functions, for which

that rule was applicable. In the same sense, the Judgment of the

National Court of 09/16/2008 (Rec.488/2006)

In the present case, the dissemination of personal data of several councilors of the City Council of the Villa of ***LOCALIDAD.1 on the web page ***URL.1 began with the publication, on March 29, 2016, of the news that incorporated the documents detailed in letter a) of the second accredited fact that appears in the factual background Ninth (April 2015 payroll of Mr. F.F.F. and concepts remuneration included in the payroll of Don FE.E.E. and Don D.D.D. That detailed on the page "Annual Report Concept Month (Period January to December 2015)", continuing to be disseminated as of May 4, 2018, in accordance with prove the screenshot print provided by the claimant. That is, the processing of the personal data cited on the aforementioned website began before of the entry into force of the RGPD and the Organic Law 15/1999 of Protection of Personal Data (hereinafter, LOPD).

However, this behavior of the defendant has been maintained over time, as As can be deduced from the accesses made after the presentation of the claim to the web address indicated above in which said news continued to be accessible in the open, specifically, in the accesses made from this Agency to the web address in question dated July 24, 2019 and 15 January 2020, as documented in the procedure.

In accordance with said jurisprudential criterion, the facts related to the publication and maintenance in the cited web address of the documents contained in the news called "The PP of ***LOCALIDAD.1 will request the reduction of the remuneration of the entire Corporation", are subject to the provisions of the GDPR, applicable from May 25, 2018.

Seated the above, contrary to the allegation of prescription supported by the claimed, it is worth bringing up the Judgment of the National High Court of 06/24/2010 (Appeal 539/2007), which confirms the doctrine traditionally followed by that

Court.

In the Judgment of 06/24/2010, the National High Court confirms the sanctions that the AEPD imposed on the appellant for two violations of articles 6.1 and 4.3 of the LOPD. Starting from the proven facts, which prove that the service www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

11/19

telephone service was deactivated due to non-payment on 08/12/2002 and that the data of the affected included in the "Asnef" file until 02/28/2005, solves the issue of the prescription of the infractions that the appellant invokes, reasoning the following (Third Legal Basis):

"In any case, we find ourselves in the case of the so-called permanent infractions, regarding which this Chamber has repeatedly declared, already from the SAN, of September 21, 2001 (Rec. 95/200) that, (...) are characterized because the conduct constituting a single offense is maintained for a period prolonged period of time, which implies that the statute of limitations does not start "by not have ceased the situation of infraction pursued" - STS of February 18, 1985....." Criteria that have also been followed, among others, by the SSAN (1a) of 22 February 2006 (Rec. 343/2004), November 21, 2007 (Rec. 117/2006), December 11, December 2008 (Rec. 574/2007).

Legal concept fully applicable to the alleged litigation, taking into account consideration that both the processing of data without consent and the inclusion of the same in Asnef was maintained for a prolonged period of time, so it will be necessary to be at the end date, and not the start date, for the

computation of the statute of limitations. And to this end it turns out, as can be deduced from the actions carried out that the personal data of the complainant were registered, associated with the presumed debt, until February 28, 2005. Therefore, This date must necessarily be considered for the purposes of commissioning the infringement..."

Adds the Judgment on the same Basis that (...) treatment without consent that does constitute a continuing or permanent infringement, since is not consumed in a single action, but continues for as long as that the improper data remains in the Asnef [file], precisely because its Permanence in said delinquency file is the responsibility of the appellant, in as a creditor entity and informant of said erroneous data."

Applying the preceding criterion to the facts valued in the present sanctioning procedure related to the publication of the news that contained the outlined personal data in the cited web address, it is verified that the personal data of the affected Councilors have remained visible for any third party that accesses the outlined web address, on an ongoing basis, from March 29, 2016, date of publication of the news, until at least on January 15, 2020, date of last access to said web address. Taken care that the term of three years established for the prescription of the serious infraction that motivates these actions would be computed from the day on which said infraction would have committed, in the event of disclosure of the personal data contained

In the aforementioned news, it is not possible to speak of prescription of the infraction as long as the defendant had not ceased the infringing activity imputed to him in relation to those specific facts, at least until January 15, 2020.

With regard to the images disseminated from the section

"Publications" of the Facebook Page of the "Partido Popular ***LOCALIDAD.1", are

notes that, in view of the evidence available in the proceeding,
between the commission of the imputed infraction, which occurred on October 8, 2018
as can be deduced from the catches provided by the claimant, and the date of
interruption of the prescription of the imputed infraction, produced on July 30
of 2019 when the notification of the agreement to start the

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

12/19

sanctioning procedure against the defendant, the three years foreseen have not elapsed
in article 72.1.a) of the LOPDGDD.

For the reasons stated, the prescription of the infraction that is invoked must
be rejected.

v

In the first place, it is observed that in relation to the commission of the infraction of the
imputed duty of confidentiality it is irrelevant that the claimant is a councilor
of the PSOE list, since the substance lies in the dissemination to third parties not
interested parties of identification data (name and surnames) of said person associated
details of the amounts corresponding to the different remuneration concepts
included in the image of the page of the "Annual Concept Month Report (Period January
to December 2015)") incorporated into the news published in the outlined web address,
as also occurs in the dissemination of the personal data of the remaining
Councilors affected by the publication of the rest of the images of said news or of
a second page of the aforementioned annual report on the Facebook page of the
"People's Party ***LOCALITY.1".

The same argument can be used regarding the fact that the payroll published corresponds to a councilor of the claimed, since in said document together with the name and surnames of said person, their NIF, affiliation number is also shown Social Security, contribution group and seniority date of said person.

Secondly, it is estimated that the documentation that has been disseminated breaching the duty of confidentiality affects documents with information of personal character, so its dissemination exceeds the coverage of that documentation whose disclosure could be covered by the application of the principles of transparency and the public status of the positions.

To which is added that citizens can have transparent knowledge and general of the remuneration of the councilors of the City Council of the Villa de ***LOCALIDAD.1 through its transparency portal, as the subject obliged to comply with the transparency provisions of the public activity of the Title I of Law 19/2013 Law 19/2013, of 9/12, on transparency, access to information governance and good governance, (hereinafter, LTAIBG) by virtue of the provisions of article 2.1.a) of said rule. Similarly, it is not necessary to publish on web pages or social networks documents with personal information such as that published to defend the postulates of the defendant in order to reduce the remuneration received by said councillors.

Third, in that the data was exposed to meet the duty of transparency, it should be noted that the preamble to the LTAIBG indicates that:

“The Law expands and reinforces the obligations of active publicity in different scopes. In terms of institutional, organizational and planning information, it requires

C/ Jorge Juan, 6

28001 – Madrid

to the subjects included in its scope of application the publication of information regarding the functions they carry out, the regulations that apply to them and their organizational structure, in addition to its planning and evaluation instruments of its degree of compliance. In terms of information of legal relevance and that directly affects the field of relations between the Administration and the citizens, the law contains a wide repertoire of documents that, being published, will provide greater legal certainty. Likewise, in the field of information of economic, budgetary and statistical relevance, establishes a wide catalog that must be accessible and understandable for citizens, given its character of optimal instrument for the control of the management and use of public resources. Lastly, the obligation to publish all the information that is most frequently the subject of a request for access, so that transparency obligations are consistent with the interests of the citizenship."

To channel the publication of such an enormous amount of information and facilitate compliance with these active advertising obligations and, from the perspective of that it is not possible, on the one hand, to talk about transparency and, on the other, not to put the means adequate to facilitate access to the disclosed information, the Law contemplates the creation and development of a Transparency Portal

."

"Chapter II, dedicated to active advertising, establishes a series of obligations for the subjects included in the scope of application of Title I, which they will have to disseminate certain information without waiting for a specific request from the

managed. This point includes data on institutional information, organizational and planning, of legal relevance and of an economic nature, budgeting and statistics.

In order to decisively favor everyone's access to the information disseminated, the Transparency Portal will be created, which will include, in addition to the information on which there is an obligation of active publicity, the one whose access is requested with more frequency. The Portal will be a meeting and dissemination point, showing a new way of understanding the right of citizens to access information public. It is also foreseen in this point that the General Administration of the State, the Administrations of the Autonomous Communities and the entities that make up the Local Administration can adopt collaborative measures for compliance of its active advertising obligations.”

The aspect of active advertising is developed, among others, in article 5 of the LTAIBG, which provides:

“Article 5. General principles

1. The subjects listed in article 2.1 will publish periodically and updated the information whose knowledge is relevant to guarantee the transparency of its activity related to the operation and control of the public performance.
2. The transparency obligations contained in this chapter are understood without prejudice to the application of the corresponding autonomous regulations or of other specific provisions that provide for a broader regime in terms of

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

advertising.

3. The limits to the right of access to the

public information provided for in article 14 and, especially, that derived from the

protection of personal data, regulated in article 15. In this regard,

when the information contained specially protected data, advertising only

will be carried out prior to their dissociation.

4. Information subject to transparency obligations will be published in

the corresponding electronic offices or web pages and in a clear way,

structured and understandable for those interested and, preferably, in formats

reusable. Appropriate mechanisms will be established to facilitate the

accessibility, interoperability, quality and reuse of information

published as well as its identification and location.

In the case of non-profit entities that pursue exclusively

purposes of social or cultural interest and whose budget is less than 50,000 euros, the

fulfillment of the obligations derived from this Law may be carried out using the

electronic means made available to you by the Public Administration of which

most of the received public aid or subsidies come from.

5. All information will be understandable, easily accessible and free of charge and will be

provision of persons with disabilities in a modality provided by

means or in appropriate formats so that they are accessible and understandable,

in accordance with the principle of universal accessibility and design for all.”

Therefore, the disclosure of personal data carried out by

the claimed, who is not among the subjects listed in article 2.1 of the

LTAIBG, does not fit in the way in which it has been carried out within the assumptions

provided for as active advertising in said rule, as it is neither necessary nor proportional to the

knowledge by third parties of the personal information included in the documents subject to publication on the web address and Facebook page outlined in the Second Proven Fact.

Consequently, it is estimated that the respondent has violated the principle of confidentiality contained in article 5.1.f) of the RGPD.

SAW

Sections b), d) and i) of article 58.2 of the RGPD, "Powers", provide the

Next:

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

corrections listed below:

(...)

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

warning when the processing operations have violated the provisions of

this Regulation;"

(...)

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

15/19

"d) order the person responsible or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a specified manner and within a specified period;"

"i) impose an administrative fine in accordance with article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

For the purposes of determining the sanction that could be associated with the mentioned infraction, the following precepts must be taken into account:

Sections 1 and 5.a) of article 83 of the RGPD establish:

"1. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

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

with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 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"

In turn, article 72.1.a) of the LOPDGDD, under the heading "Infringements

considered very serious", provides:

"1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679."

In accordance with what was stated in the previous Fundamentals of Law, the

claimed is responsible for the commission of an infringement of the provisions of the

article 5.1.f) of the RGPD, typified in article 83.5.a) of the aforementioned legal text and

classified as very serious for prescription purposes in article 72.1.a) of the

LOPDGDD, and may be sanctioned, in accordance with the provisions of article

58.2.b) of the RGPD, with a warning.

For these purposes, it is recalled that article 24 of the RGPD establishes the following

regarding the obligations to be fulfilled by the data controller in relation to

with the “Data protection by design and by default”: (The underline is from the

AEPD)

"1. Taking into account the state of the art, the cost of the application and the

nature, scope, context and purposes of the treatment, as well as the risks of various

probability and seriousness that the treatment entails for the rights and freedoms of

natural persons, the data controller will apply, both at the time of

determine the means of treatment as at the time of the treatment itself,

appropriate technical and organizational measures, such as pseudonymisation, designed

to effectively apply the principles of data protection, such as the

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

16/19

minimization of data, and integrate the necessary guarantees in the treatment, in order to

comply with the requirements of this Regulation and protect the rights of

interested.

2. The data controller will apply the technical and organizational measures

with a view to guaranteeing that, by default, they are only processed

the personal data that is necessary for each of the specific purposes of the

treatment. This obligation will apply to the amount of personal data collected, to

the extension of its treatment, its conservation period and its accessibility. Such

measures shall in particular ensure that, by default, personal data is not accessible, without the intervention of the person, to an indeterminate number of people physical.

3. An approved certification mechanism may be used under the Article 42 as an element that proves compliance with the obligations established in sections 1 and 2 of this article.”

In this case, there is no evidence that prior to receiving the proposal for resolution the claimant would have adopted the technical and organizational measures necessary tending to guarantee the fulfillment of the duty of confidentiality that

It is required, especially, in order to prevent personal data such as disseminated through the aforementioned media were accessible to third parties not interested. Compliance with the obligation of political control as the purpose of the treatment carried out invoked does not exempt the defendant from guaranteeing the principle of confidentiality of data cited, not resulting, on the other hand, necessary to disseminate documents that include information of a personal nature concerning certain Councilors to defend the postulates of payroll reduction and fees of Councilors of the aforementioned City Council referred to in the reclaimed.

For all of which, the alleged non-existence of intent regarding the disclosure of personal data does not invalidate the responsibility of the claimed in the commission of the imputed infraction, since it has not shown the diligence that was required in order to guarantee compliance with the principle of confidentiality included in the data protection regulations.

In fact, the exposure of documents with personal data attached to the news published on the aforementioned website has been maintained until, with dated January 24, 2020, the news and the documents attached to it were deleted,

that is, until after the proposed resolution is received by the respondent of the procedure did not cease the treatment of the personal data included in the cited documents.

However, there is no evidence that the respondent has deleted the information from personal character published in the "Publications" section of the Facebook page of the "Popular Party ***LOCALIDAD.1" that appears cited in point b) of the Fact Proven Second of this resolution, since in none of the allegations made to the procedure has provided any evidence in this regard.

In the present case, it is considered appropriate to impose the sanction of warning provided for in article 58.2.b) of the RGPD in view of the following circumstances: the

The main activity of the respondent is not linked to the usual treatment of Personal data; consider that the administrative fine that could imposed in accordance with the provisions of article 83.5.a) of the RGPD would constitute a
www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

17/19

disproportionate burden for the claimed. This is without prejudice to the fact that it also considers appropriate to apply the provisions of article 58.2.d) of the RGPD, ordering the person in charge of the treatment the performance of certain operations linked to the treatment of data studied in the form and within the period specified in the resolution agreed, corrective power that in this case entails the anonymization or elimination of the personal data contained in the different documents published.

Regarding the request made by the respondent to take into account

consideration the provisions of article 76.2 of the LOPDGDD in relation to the article 83.2.k) of the RGPD, it should be noted that these criteria are applicable to the effects of the graduation of the amount of the administrative fines provided for in sections 4, 5 and 6 of article 83 of the RGPD, a situation that does not occur in the present case in which the sanction imposed responds to the warning provided in article 58.2.b).

Confirmed the infringement described,

and not being accredited in the procedure that the respondent has adopted technical and organizational measures tending to avoid the repetition of similar personal data processing, considers it convenient to apply the provisions of article 58.2.d) of the RGPD, ordering requested to carry out a series of specific actions to adapt the operations of the type of treatment studied according to the provisions of article 5.1.f) of the RGPD, in order to avoid the dissemination to third parties of personal information such as that described through web addresses such as the one reviewed or social networks such as the indicated Facebook page, and must, in parallel, carry out the actions necessary to guarantee the due adequacy between the principle of confidentiality regarding the processing of personal data and the adequacy of the performance of the political parties to the principle of transparency of public activity in which integrates active advertising and access to public information by users citizens.

Such measures must be adopted by the claimed party within ONE MONTH, computed from the day following the notification of this resolution penalty, and must be accredited by the claimed compliance in the same deadline by providing documentation or any other means of proof valid in law that allows verifying its adoption and implementation in a

reliable.

It is noted that section 6 of article 83 of the RGPD, establishes that “6. The

Failure to comply with the resolutions of the supervisory authority pursuant to article 58,

paragraph 2, will be sanctioned in accordance with paragraph 2 of this article with

administrative fines of a maximum of EUR 20,000,000 or, in the case of a

company, of an amount equivalent to a maximum of 4% of the turnover

global annual total of the previous financial year, opting for the highest amount.”

Article 72.1.m) provides that: “1. According to what the article establishes

83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe to

three years the infractions that suppose a substantial violation of the articles

mentioned therein and, in particular, the following: (...)

m) Failure to comply with the resolutions issued by the authority of

competent data protection in exercise of the powers conferred by article

58.2 of Regulation (EU) 2016/679.”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

18/19

Therefore, in accordance with the applicable legislation and valued the

concurrent circumstances whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the POPULAR PARTY, with NIF G28570927, in accordance

with the provisions of article 58.2.b) of the RGPD a sanction of WARNING for

an infringement of article 5.1.f) of the RGPD, typified in article 83.5.a) of the RGPD.

SECOND: ORDER the POPULAR PARTY, with NIF G28570927, in accordance

with the provisions of article 58.2.d) of the RGPD, which are generally adopted appropriate technical and organizational measures to guarantee the confidentiality of the personal data included in the payrolls of the members of the corporations authorities, also avoiding the dissemination to third parties of personal data contained in the pay slips issued by the Town Halls in the name of those councilors, as well as the disclosure of any other documentation and/or information concerning them referred to the different concepts that include these payrolls. Likewise, and in relation to the analyzed case, it must anonymize or delete the personal information contained in the documents disseminated in the "Publications" section of the Facebook page of the "People's Party ***LOCALITY.1".

These measures must be adopted within a period of one month computed from the day following the day on which this sanctioning resolution is notified,

The means of evidence accrediting its compliance must be provided in the same term.

THIRD: NOTIFY this resolution to the POPULAR PARTY, with NIF G28570927.

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

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

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

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

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

before the Director of the Spanish Agency for Data Protection within a period of month from the day following the notification of this resolution or directly

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

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

the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

Electronic Registration of

through the

19/19

[<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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es