

□ Procedure No.: PS/00430/2018

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection (AEPD)

and based on the following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 09/19/2018

before the AEPD against B.B.B., *** POSITION.1 RIBADEDEVA (PINCIPADO DE ASTURIAS) (in

later, the claimed one). The grounds on which the claim is based are that the claimant

served in the RIBADEDEVA City Council and in his capacity as such, filed

a lawsuit in the social area against the City Council and ***PUESTO.1 as part

codefendant. It states that "the respondent has exposed the ***DATE.1 on his page of

FACEBOOK the sentence integrates with all the data and other circumstances being able

anyone can access it."

Provides a copy of the complaint filed with the Civil Guard of ***DATE.2 indicating that

the judgment of the Social Court number ***NUMBER.1 of Oviedo of ***DATE.3, is

found in the social network of FACEBOOK by B.B.B., *** CURRENT POSITION.1 of

RIBADEDEVA

It provides a printout of the FACEBOOK page of the respondent, where his/her name appears.

name and surnames and photo, without mentioning the City Council, in which some

comments with the title IMPORTANT OFFICIAL COMMUNICATION. Although not read

adequately, the complete reference to the name of the claimant and the lawsuit is stated

filed against the City Council and the and that they have been acquitted, and accompanying

full form the sentence "where the plaintiff's lies are patent" "and

Attached is the full sentence. The document is signed by B.B.B. with the addition of ***POST.1 of the

Ribadadeva City Council and there are comments to the information. In the sentence, the claimant is a plaintiff against the City Council and D. B.B.B. as defendant.

SECOND: In view of the facts and the documents provided by the claimant, at claimed, address of the City Council, a copy of the claim is sent through the AEPD, to send:

Copy of the communications and the decision adopted that has been sent to the claim.

1.
maintenance regarding the transfer of this claim.
Report on the causes that have motivated the incidence that has originated the claim.

two.
mation.

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Report on the measures adopted to prevent similar incidents from occurring.

3.
lares.

On ***DATE.4, the CITY COUNCIL states in its response with the signature of

*** POSITION.1, B.B.B., the one claimed, indicating:

1) The claimant provides services for the City Council and has filed a lawsuit in the Social Court requesting the termination of his employment contract derived from the article 50 of the Workers' Statute, due to a situation of workplace harassment, and Repeated filings by the City Council, requesting compensation of €50,000 for moral damages. The content of the sentence reveals the vicissitudes in the rela-

the claimant's relationships with a partner and other personal circumstances of the clamoring in the provision of services such as moving to another plant and reassigning assignment of tasks among employees. The respondent states that the day after be notified of the sentence, ***DATE.1, the claimant on his FACEBOOK wall published a message of which a copy is provided in which it begins "it is sad to have to go to trial so that two days before it, the defendant does what he had to have done five months earlier, which to a large extent has motivated the de-orders be dismissed. I already knew when I filed the lawsuit the difficulty of prove a situation of harassment at work, especially in a public administration but if I had not gone to court, this matter would possibly be in an unresolved drawer, and my personal and professional dignity questioned in writing, that in no way can admit... It has been clarified that my behavior as an employee and co-worker has been correct". Appreciate the neighborhood support and ends by indicating that he is going to run for the next elections.

Given these comments, the respondent states:

He exposed the sentence before the intention of the claimant to misrepresent the content

a.

do and failure of the same that was unfavorable.

In the same social network FACEBOOK, he made a statement in which he began

za indicating that "a person linked to the City Council is trying to manipulate

with falsehoods and half-truths to the local public opinion in relation to a matter

labor. Said person filed a labor lawsuit against the City Council and

against me on 06/22", refers to the name and surnames, which are contained in the

llo of the sentence, and points out that because it is illustrative and "to prove the facts more

that the malicious demonstrations without any proof" "I accompany in this

message the sentence integrates" because it is understood that it indicates that there is no evidence

any professional harm or attack on their dignity. Along with those comments

He views the exposed sentence, of which he provides a full copy.

It states in the same that there is legitimacy for it derived from article

6.1. c) and 6.1.e) and at the individual level 6.1.f) of the RGPD for the serious accusations that poured into his claim and 69 and 70 bis 3 of the LBRL.

b.

It adds that the publicity of the personal data itself as the la-

claimant's labor and health status have been disclosed by the claimant himself to

many residents of the Council considering that it rules out the eventual illegality of the treatment

lie object of the claim.

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c.

Furthermore, there was a clear public interest, as shown by the fact that

signed citizens' signatures in support or in the interests of the claimant (provides copia of the same).

2) From the reading of the judgment of ***DATE.3, it can be deduced, among other elements:

- A lawsuit is filed against the City Council and D. B.B.B. What

defendant, in the judgment they also refer to him as mayor.

- In proven facts, a co-worker of the

claimant and details the situation of conflict and tension between the two, the harassment

and harassment that the employee claims to suffer and the request for measures to

solve the situation that the claimant made to the City Council. are reported

the actions of the mayor bringing both employees together in the face of complaints, the reassignment of tasks and the transfer to the second floor of the plaintiff, and the interviews. The status of the plaintiff in an IT situation is mentioned since 03/23/2018 "due to anxiety disorder, which continues". it contains the agreement of ***POSITION.1 of ***DATE.5 of reassignment of tasks.

- On legal grounds, the judge states that the plaintiff pre-tends to terminate the contract based on workplace harassment. Enter to assess discharge question.

- In the grounds of law it is indicated that "the existence of any determining indication of any situation of harassment, persecution degradation or attack on the personal and labor dignity of the plaintiff" or "The Mayor here sued as the author of the persecution that the plaintiff complaint, after the briefs presented by the parties on 25 and 01/30 met with them...it is indicated that the mayor intended to try to solve the confrontation. The claim is dismissed.

3) Provide a copy of the document delivered to the claimant on 11/22/2018 in which details explanations of the reasons why it states the judgment rejecting the petition made before the AEPD.

THIRD: On 11/29/2018, the claim is admitted for processing.

FOURTH: On 05/22/2019, a letter is received from the claimant in which he requests to know the status of the file. In a letter dated 06/25/2019, you are informed that the PS/00430/2018 of warning against

CITY COUNCIL OF RIBADEDEVA

(*** POSITION.1) and its maximum duration. You are informed that at the time the resolution that puts an end to the instructed procedure, a new communication will be sent informing him of the publication of said resolution on the Agency's website.

FIFTH: On 05/27/2019, the director of the AEPD agreed:

START SANCTION PROCEDURE

TOWN HALL OF

1.

RIBADEDEVA (Mayor) for the presumed infraction of article 6.1.f) typified in the article 83.5 a) of the RGPD.

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ORDER the RIBADEDEVA CITY COUNCIL (** POSITION.1) in agreement

two.

with the provisions of article 58.2 d) of the RGPD, to withdraw the copy of the sentence exposed from the FACEBOOK page of **PUERTO.1

TOWN HALL OF

RIBADEDEVA.

SIXTH:

allegations on 06/12/2019 stating:

B.B.B., stating as ** POSITION.1 of RIBADEDEVA presents

a) The copy of the judgment was removed from the FACEBOOK page on 06/06/2019 upon receiving the startup agreement.

b) Reiterates the argument that he presented the full sentence so that public opinion knew the circumstances and limit the prior statement of the claimant in

FACEBOOK indicating that two days before the trial the defendant had made

something that I should have done before, not figuring any aspect of that

statement in the sentence. Reiterates that transparency and the right to inform

The neighbors agree with the publication on said FACEBOOK page.

c) Reiterates several criteria of legality in the treatment, articles 6.1. c), e) and f) of the RGPD

that links with article 69 of Law 7/1985 of 2/04 of bases of the local regime,

also alluding to Law 19/2013 of 9/12, on Transparency and Access to

public information (LT) article 5.

d) It adds that the legitimate interest of the Mayor is higher because it is more qualified, since

responds to the statements made by the claimant on the social network on 09/12/2018,

that tried to misrepresent the ruling that they needed the full exposition of the

sentence and its proven facts. The legitimate interest is based on the protection of your

right to honor and to his own image due to the accusations made against him.

SEVENTH: On 06/27/2019, the claimant submits a document indicating that it has been opened

initiation agreement against the City Council, when his complaint was addressed to the natural person

held by the Mayor's Office of said city council, which publishes in its own profile of

FACEBOOK, profile that lacks any reference to the City Council. State that you request

the revision of the agreement and its correction.

Provide a copy of a screen print, date ***DATE.6 on which the website is viewed

of the Town Hall, and a link to a B.B.B. FACEBOOK page, although it indicates that

now it doesn't work. You can see the photo that matches the profile of the B.B.B page.

on FACEBOOK that he contributes in this or the claimant contributed to this procedure.

It also accompanies a printed copy of the FACEBOOK profile of the personal account of

B.B.B., stating that "at no time does it refer to the fact of being

***POSITION.1 Ribadedeva in your profile information. "

New writ from the claimant dated 08/05/2019 for it to be considered that the complaint

it was against B.B.B., not City Hall or as ***POST.1. Provide a letter in which

distinguishes two ways to appear on FACEBOOK; a profile and a page

FACEBOOK, being a profile a personal account, "which is used for a non-commercial purpose and represents individuals. The first time you sign up for Facebook, you are given a profile.

Your profile is where you add friends and family and share personal photos, videos and updates on your life. While all updates are public, only those

People who have added you as a friend will be able to see your content. Users who don't

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are your friends will be able to access the public posts on your profile, but they will not be able to see nothing you have shared especially with friends or custom groups.”

“On the other hand, a Facebook page is a business account that represents a company, an organization, a public figure, etc. It is similar to a profile Facebook, but offers unique tools to manage and monitor the interaction and participation.”

“While you can only have one Facebook Profile associated with your name, you can have an unlimited number of Pages associated with your account. Unlike the Profiles, multiple people can manage and contribute to a Page using their own Facebook login information.

“Pages are great for building an online following because they're not limited to the number of friend requests. Instead, users just have to click the Like button to start receiving updates.”

EIGHTH: On 11/28/2019, a resolution proposal is issued with the literal:

"That by the Director of the Spanish Agency for Data Protection is sanctioned with

WARNING to the CITY COUNCIL OF RIBADEDEVA (**POSITION.1) for an infraction

of Article 6.1.f) of the RGPD, in accordance with Article 83.5 of the RGPD”.

No claims have been received against it.

PROVEN FACTS

1) The claimant, administrative assistant labor employee of the Municipality of

On 06/25/2018, RIBADEDEVA filed a lawsuit before the Social Court against Mr.

BBB and the RIBADEDEVA City Council requesting the termination of the employment relationship for

violation of their rights and compensation of 50 thousand euros for damages. The

The lawsuit ended with a sentence of ***DATE.3. The judgment refers to D.

BBB as *** POSITION.1, chief of staff and their issued resolutions. The

lawsuit “dismisses the one presented by the claimant, absolving the defendants of the

claims made against him”.

2) The sentence assesses the alleged workplace harassment by the claimant, the bad

relationships with a partner of the claimant, who is identified by names and

surnames, writings presented by her before the *** POSITION.1 referring to the work environment with

the claimant, the claimant's change of plant as a result of a meeting of

***POST.1 with the parties on 02/02/2018. The sentence determines that it is not appreciated

existence of any determining indication of any situation of harassment, persecution,

degradation or attack on the personal and work dignity of the plaintiff “To *** POSITION.1,

here sued as the author of the persecution that the plaintiff denounces... met

with them...and that the plaintiff stated that he did not want to be on the ground floor, therefore

it is not explained what kind of retaliation that is when you are accessing what the

The actor requested “there is not the slightest indication that there has been a conduct of the

*** POSITION.1 aimed at persecuting or harming the plaintiff, rather the opposite.”

In the ninth proven fact, it is indicated that the plaintiff “passed to the IT situation due to

anxiety disorder on 03/23/2018, in which it continues”.

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3)

The claimant posted on his FACEBOOK page, associated with his name and surnames a message on *** DATE.1 at 18:21 indicated "Today is a great day" in which it states that "It is sad to go to trial so that two days before it the defendant does what he had to have done 5 months earlier, which to a large extent has motivated the demand to be dismissed", without explaining what he means, continues indicating that "I knew that when filed the lawsuit, it would be difficult for him to prove harassment at work", which "is clarified that your behavior as an employee and co-worker has been correct", that "He has been working as a public employee for 18 months", he appreciates the neighborhood support received and announces that he is going to enter politics.

After seeing B.B.B., Mayor of RIBADEDEVA, the claimant's announcement on FACEBOOK,

4)

on the same social network FACEBOOK, on a page that contains the name B.B.B., without any reference to the City Council, presented a written response entitled "COMUNICADO OFFICIAL" pointing out that "some people linked to the City Council are trying to manipulate with falsehoods and half-truths the local public opinion in relation to a labor issue that should never have left the walls of the consistory".

He indicates that said person filed his lawsuit on 06/22/2018 against him and the City Council, accusing him of workplace harassment and asking for compensation. quote the literal of the judgment with the name of the claimant. He states that in the face of the demonstrations malicious, exposes the full sentence. Add your writing with your name and surnames, the position of *** POSITION.1 Ribadedeva.

The defendant declares that he removed the judgment during the processing of this

5)

procedure, upon receipt of the initiation agreement.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

II

To analyze the imputed infraction we start from the principle of publicity of the judicial proceedings, constitutionalized by art. 120.1 EC, and referred to in different precepts of the Organic Law of the Judiciary (articles 232, 234, 235 and 266.1). Article 232 LOPJ establishes "1 The judicial proceedings will be public, with the exceptions established by procedural laws.

2. Exceptionally, for reasons of public order and protection of rights and liberties, the Judges and Courts, may by reasoned resolution limit the scope of publicity and agree on the secrecy of all or part of the actions".

Article 234 LOPJ prescribes "The Secretaries and competent personnel of the Courts and Tribunals will provide the interested parties with all the information they request about the status of the judicial proceedings, which they may examine and hear, unless they are or have been declared secret in accordance with the law. In the same cases, the

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testimonials that are requested, with the expression of their addressee, except in cases in which the law provides otherwise".

Article 235 LOPJ refers to the access by the interested parties to the books, files and judicial records that are not reserved and article 266 states that will allow any interested party access to the text of the judgment.

The STS of March 3, 1995, resource 1218/1991, indicates in relation to the publicity of judicial actions "...that the right and correlative duty of knowledge and access to the text of judicial resolutions is graded according to three various areas or spheres of affectation, each one governed by different criteria, namely: a) one of maximum amplitude or of generalized affectation, which includes the public or the citizens in general, without specific qualification and that corresponds to the publicity of the judicial actions carried out in all kinds of processes, which allows those go to the practice of proceedings that must take place "in public hearing", except the declaration of reservation that the court agrees with reasons, principle of advertising constitutionalized in art. 120.1 of the Fundamental Norm and which includes art. 232.1 of the Organic Law.

b) at the opposite extreme, of maximum restriction of the scope of knowledge of the judicial decisions, are the acts of notification and communication of these, directed only to those who have the status of procedural party under the laws of procedure, and that in terms of sentences determine the right and correlative duty of the Judges and Courts to their knowledge through the instrumental act of notification, as prescribed by art. 270 LOPJ.

c) occupying an intermediate position that places the question in a more imprecise sphere, find the procedural actions already completed, including the sentences, integrated into books, files or judicial records, and with respect to which, on the one hand, art. 235 LOPJ determines that: "the interested parties will have access to the books, files and judicial records

that are not reserved, through the forms of exhibition, testimony or certification established by law"

Regarding the quality of interested party for the aforementioned purposes, it is specified in the cited sentence that "the legitimate interest that is required in the case, can only be recognized in whom, natural or legal person, declares and accredits, at least prima facie, before the judicial body, a connection of a concrete and unique nature with the very object of the process and, therefore, of the sentence that finalized it in the instance, either with one of the procedural acts through which it has been developed and which are documented in record, a connection that, on the other hand, is subject to two conditions: a) that it does not affects the fundamental rights of the procedural parties or of those who in some way have intervened in the process, to essentially safeguard the right to privacy and personal and family intimacy, the honor and the right to one's own image that could eventually affect those people; and b) that if the information is used, as a mediating activity, to satisfy the rights or interests of third parties, and in consequence acquires, as is the case, an aspect of globality or generality by relation not to a specific process, such interest remains within the scope of the legal system and its applicators, in general, because something else would be as well as involving or collaborating with the judicial body in tasks or activities that, by However lawful they may be, they go beyond their jurisdictional function."

The doctrine established in said sentence has been reiterated in the SSTs of 22 May 1996 and April 6, 2001, appeal 9448/1996.

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Also the SAN (1st) of November 29, 2001, resource 531/2000 echoes the doctrine established by the aforementioned STS of March 3, 1995, and indicates that "the data contained in the books and court records are not available to the public in a entirely free and indiscriminate since access to them is regulated and to a certain restricted measure. On the one hand, due to the appeal made by the aforementioned articles 235 and 266.1 of the Organic Law of the Judiciary to the condition of "interested party", whose significance and scope we already know the jurisprudential interpretation. On the other hand, because access to such books and archives is mediated by the necessary intervention of the Judicial Secretary and the mandatory subjection to the application and authorization process regulated in Articles 1 to 5 of Regulation 5/1995, of June 7, of the General Council of Power Judicial, on accessory aspects of judicial proceedings".

In other words, and for what interests us here, the publicity of judicial proceedings does not means that the data contained in a judicial procedure that is in the process of execution, can be examined and are available to the general public completely free and indiscriminate way, but such advertising is restricted except those actions that are held in public hearing to those who hold the condition of "interested parties", to which article 234 LOPJ appeals. This concept of interested, which does not necessarily coincides with that of the procedural part and that has been outlined by the jurisprudence in the above sense.

To finish with the examination of the jurisprudence and the regulations on this matter

It should be noted that the jurisprudential criterion exposed is consistent with the position maintained by the Civil Chamber of the Supreme Court when weighing the publicity of the sentences holdings with the right to honor, establishing in its judgment of December 22, 2008 the next:

"The publicity of the sentences constitutes an instrument of guarantee of the independence of the courts and their actions in accordance with the law, since these principles

are reinforced by the knowledge of the action of the courts by the citizens,
and must be considered closely linked to the protection of fundamental rights
inherent to the exercise of jurisdictional power by judges and courts.

This publicity can only be restricted or limited, in accordance with what is established
in the law, when it may lead to the impairment of a fundamental right of citizens.

affected individuals or a constitutionally protected asset, especially when the co-
knowledge of the data of a private nature that appear in the sentence can give rise to
the disclosure of aspects of privacy that must be protected, provided that

This disclosure is not protected by the right to information within the framework of the co-
free public communication typical of a democratic society.

Indeed, according to STC 57/2004, of April 19, FJ 5 (in the same sense, res-
pect to the publication of the judgments of the Constitutional Court, ATC 516/2004, of 20
of December, FJ 1, and STC 114/2006, FJ 7), the principles of weighting and proportionality
ity may lead to the conclusion that other fundamental rights or goods with pro-
constitutional protection must take precedence over the publicity of judicial resolutions.
cials.

This principle is applied by article 266.1 II LOPJ, introduced by LO
19/2003, of December 23, according to which «[t]he access to the text of the sentences, or to
ends of the same, may be restricted when it could
affect the right to privacy, the rights of people who require a special

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duty of protection or the guarantee of anonymity of the victims or injured parties, when appropriate.

as well as, in general, to prevent sentences from being used with confidence.

are contrary to the laws.”

When the publication of a judicial decision may affect the honor of the person

that has obtained an unfavorable result in the process, it is necessary to determine if

the exception that the LPDH establishes in the sense of considering the violation to be non-existent.

ration of the scope protected by this right when it is the product of the exercise of a right

recognized by the legal system (art. 2.2 LPDH: «The existence of

illegitimate interference in the protected area when it is expressly authorized by

law”).

The contrast between the right to honor and the right to disclose the content of the

sentence, which results from the principle of publicity, must give rise to a weighting in the

that is taken into account, in the first place, the fulfillment of the institutional purposes that the

advertising principle pursues. This aspect, in turn, requires taking into consideration the

time in which the publication was produced, taking into account whether it is a communication

neutral content of the sentence or if elements are added or subtracted that are sus-

likely to distort the objective knowledge of what was resolved by the court to convert the

publication of the ruling in a procedure suitable for undermining the honor of the person affected

beyond what is objectively implied in the field of reputation by the failure of

an action or opposition maintained before the courts of justice.

Well then, it is evident that the principle of publicity of the sentences that

tempers our LOPJ is not absolute, but finds limits, either by referring to

those who have the status of interested parties or because of the prevalence of other rights

or goods that enjoy constitutional protection, as occurs with the right to protection

of data, the latter issue that has been examined in the previous legal basis.

Finally, it should be noted that the constitutional doctrine contained in the STC

114/2006, of April 5, does nothing but corroborate what has been stated so far, since in it the Tri-

Constitutional court is limited to extracting from a joint reading of articles 120 and 164.1

CE and articles 86.2 and 99.2 LOTC -in its wording prior to the reform operated by the

Organic Law 6/2007, of May 24-, positions in relation to articles 9.1 CE and 5.1

LOPJ, a constitutional requirement of maximum dissemination and publicity of the full content of

the jurisdictional resolutions of that Court that incorporate constitutional doctrine, which

It is specified, on the one hand, in the formal obligation of publication of such resolutions in the

Official Gazette, and in a material obligation to provide the greatest accessibility and public dissemination

to their content, regardless of their nature and the process in which they are

dictate; and, on the other, that publicity and dissemination must affect the full resolution.

It is significant that for this the Constitutional Court relies especially

in art. 164.1 CE establishes, of the one who preaches that he establishes, even beyond the principle

general publicity of judicial proceedings and their resolutions of art. 120 CE, one

specific constitutional requirement of maximum dissemination and publicity of legal resolutions

opinions of this Court.

Moreover, it highlights the nuances that differentiate the principle of publicity from sentences.

tions of the Constitutional Court of the judgments of the Judiciary itself, by limiting the

applicability to that of the regime established in this regard by the LOPJ, stating the following:

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“Being evident that the possibility itself, foreseen in art. 266.1 LOPJ, to totally restrict

mind access to the text of a Judgment could be problematic, as regards

to the Constitutional Judgments, thanks to the obligation of its formal publication in the Bo-

Official bulletin, provided for both in art. 164.1 EC as in art. 86.2 LOTC, and that even the

possibility of omitting the identification of the parties involved in the process may result be, usually, much more exceptional in constitutional processes than in pro-court proceedings, thanks to the material obligation, derived from arts. 164.1 EC and 99.2 LOTC, to guarantee the maximum dissemination of the jurisdictional resolutions of this Court. end; the art. 266.1 LOPJ in conjunction with the aforementioned art. 6.4 LOPD, in any case, can serve element of reference both in relation to establishing the need for the decision on the restriction of publicity of the parties involved in the constitutional process carried out by making an individualized weighing of the concurrent constitutional interests current in the case with which the principle of publicity may conflict, as in regarding to highlight which are the interests that could be prevailing, singularly the right to privacy, the rights of those who require a special duty of guardianship, the guarantee of anonymity, when appropriate, of the victims and injured parties, and the avoidance that said data may be used for purposes contrary to the Laws. Throughout case, special emphasis should be made that the literal tenor of art. 266.1 LOPJ does not imply a limitation of the fundamental rights and constitutional guarantees with which they can the constitutional principle of maximum diffusion of the re-jurisdictional solutions of the Constitutional Court, since any fundamental right fundamental or constitutional guarantee is likely to be weighed with respect to the possibility possibility of making exceptions to said principle, including, of course, the fundamental right as provided in art. 18.4 CE in the terms and with the breadth and autonomy that has been recognized by this Court in the STC 292/2000, of November 30, in its fundamentals legal acts 5 and 6".

Consequently, this doctrine once again leads the controversial issue to the weighing of interests.

The statements of the defendant, even though they can be understood in an accusing tone, they do not suggest an answer outside the legality exposing the sentence in the social network

integrates, treatment not legitimized in accordance with the regulations in force in the circumstances given.

III

Article 4.2, .7 and .10 of the RGPD indicates: "For the purposes of this Regulation, will understand by:

2) treatment»: any operation or set of operations carried out on data personal information or sets of personal data, whether by automated procedures or no, 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, deletion or destruction;

7) "responsible for the treatment" or "responsible": the natural or legal person, authority, service or other body that, alone or jointly with others, determines the purposes and means of treatment; if the law of the Union or of the Member States determines the purposes and means of the treatment, the person in charge of the treatment or the criteria specific for their appointment may be established by the Law of the Union or of the

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Member states;

10) "third party": natural or legal person, authority, service or body other than the

The interested party, the person in charge of the treatment, the person in charge of the treatment and the persons authorized to process personal data under the direct authority of the responsible or of the person in charge;

The provision through the FACEBOOK platform of the international judgment
gra containing personal data of the claimant, of a companion of this and the
circumstances surrounding the case, visible to anyone, to third parties, supposes the im-
complaint to the CITY COUNCIL OF RIBADEDEVA of an infraction of article 6. 1, f) of the
RGPD for data processing through an automated means, which through the
social network allows you to add or upload documents, such as the sentence.

It is observed that without the intermediation of the social network platform there would be no
access and knowledge of the data that appeared in the sentence was possible. The Town Hall-
miento is the owner of files that contain personal data, among others, those related to
nates with the development of labor relations.

However, in this case, it does not appear that the City Council had intervened in
in any way in fixing the means or purposes of the treatment, nor can it be said that ***FOR-
TO.1 will act officially as spokesperson or person in charge of the treatment of that one, but
***POSITION.1 as holder of the document of the sentence, in a private environment as it was
his FACEBOOK page fully exposed the sentence. Although I did it to answer
to the claimant's statements, which did not expressly mention the name of
***POST.1, was posted on the B.B.B. website, and not on the Town Hall website. They have
to differentiate, therefore, the treatments carried out by the City Council and natural persons.
which act within it according to the instructions given, of those who still belong to
respecting their structure, they deal with them outside the instructions given or in
own benefit. Although the FACEBOOK page in which the sentence was exposed
indicated its condition as ***POST.1, it is typical of ***POST.1, not as such condition,
but privately. In this case, the responsibility for its use lies with said person.

physical person as responsible for the treatment, not the City Council.

Article 28 of Law 40/2015, of 1/10, on the legal regime of the public sector is-
tablece:

"1. They may only be sanctioned for acts constituting an administrative infraction.

natural and legal persons, as well as, when a Law recognizes their capacity to act, the affected groups, the unions and entities without legal personality and the independent or autonomous estates, which are responsible for them by way of intent or guilt."

The behavior that consists of referring, in a social network, web page created and fed by B.B.B., to personal data should be considered data processing, which according to the technical and computer procedures involve carrying out the necessary operations necessary for its content to be accessible to people who are connected to Internet, through the FACEBOOK platform, these operations being carried out in a automated ra.

Being the principles of the field of criminal law applicable, with certain nuances, in the sanctioning administrative sphere, and according to the proven facts, having ad-

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most admitted by B.B.B. that exposed the sentence as a defense against the attacks it contained the claims of the claimant, it is not possible to impute the infraction to the City Council and declare that he has committed the same.

Given that the events that gave rise to the claim occur on ***DATE.1 and therefore seriousness, are not prescribed, so proceed to initiate proceedings against the person of B.B.B.

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE, in accordance with the provisions of article 90.1 of the LPCAP

the non-existence of responsibility for

THE CITY COUNCIL OF RIBADEDEVA

(** POSITION.1) in the alleged infringement of article 6.1.f) of the RGPD.

SECOND: NOTIFY this resolution to the RIBADEDEVA CITY COUNCIL,

(** POST.1).

THIRD

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

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

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 one month from the day

following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

in accordance with the provisions of article 25 and section 5 of the fourth additional provision

of Law 29/1998, of 13/07, regulating the Contentious-administrative Jurisdiction, in the

period of two months from the day following the notification of this act, as

provided for in article 46.1 of the aforementioned Law.

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

may provisionally suspend the firm resolution in administrative proceedings if the interested party

states its intention to file a contentious-administrative appeal. If this is the

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

Spanish Agency for Data Protection, presenting it through the Electronic Registry

of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the

remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1/10. Also

must transfer to the Agency the documentation that accredits the effective filing of the Sponsored links. If the Agency was not aware of the filing contentious-administrative appeal within two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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28001 – Madrid

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