

□ Procedure No.: PS/00279/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on July 9, 2019 filed  
claim before the Spanish Data Protection Agency.

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

The reasons on which the claim is based are that photographic material has been published  
and other personal data in “\*\*\*URL.1”, without your consent.

On June 4, 2019, he requested the deletion of his personal data from the respondent,  
but it doesn't respond.

Likewise, the respondent states that on the aforementioned website the legal notice that  
public is insufficient and its privacy policy does not meet the requirements  
regarding the processing of personal data.

Among others, the following documentation is provided:

□ Email addressed to the address \*\*\*EMAIL.1 exercising the right of su-  
pressure of the claimant's personal data.

The background information is the following:

Dated June 1, 2020, within the admission procedure  
E/08088/2019 and without being able to transfer the claim to the claimed one,  
agrees to open these investigative actions in relation to the claim  
statement filed by the claimant. The claimant is notified on July 8,  
2020.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), dated June 1, 2020, within the procedure of admission E/08088/2019, this claim is transferred without got response.

THIRD: On September 21, 2020, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of article 6 of the RGPD, article 13 of the RGPD, typified in the Article 83.5 of the RGPD.

FOURTH: On October 7, 2020, the agreement to start this procedure, becoming the same in resolution proposal in accordance

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/7

with articles 64.2.f) and 85 of Law 39/2015, of October 1, on Procedure

Common Administrative System of Public Administrations (LPACAP), by not carrying out claims within the specified period.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

#### FACTS

FIRST: A claim is filed because photographic material has been published and other personal data in “\*\*\*URL.1”, without the consent of its owner.

SECOND: On June 1, 2020, within the admission procedure

E/08088/2019 this claim is transferred without a response being received.

THIRD: On October 7, 2020, the agreement to start this

procedure, becoming the same in resolution proposal in accordance with articles 64.2.f) and 85 of Law 39/2015, of October 1, on Procedure Common Administrative System of Public Administrations (LPACAP), by not carrying out claims within the specified period.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

Article 6.1 of the RGPD establishes that for the treatment to be lawful, will require the interested party to give their consent for the processing of their data for one or more specific purposes.

Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons in relation to regarding the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGPD), under the rubric "Definitions", provides that:

"For the purposes of this Regulation, the following 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,

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

3/7

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;"

Therefore, in accordance with those definitions, the collection of data from

personal character through forms included in a web page constitutes a

data processing, in respect of which the data controller must give

compliance with the provisions of article 13 of the RGPD, a precept that has displaced

from May 25, 2018 to article 5 of Organic Law 15/1999, of May 13,

December, Protection of Personal Data.

In relation to this matter, it is observed that the Spanish Agency for

Data Protection has at the disposal of citizens, the Guide for the

compliance with the duty to inform (<https://www.aepd.es/media/guias/guia-model->

[clause-informative.pdf](https://www.aepd.es/media/guias/guia-model-)) and, in case of low-risk data processing, the

Facilita free tool (<https://www.aepd.es/herramientas/facilita.html>).

In this sense, article 4.11 of the RGPD defines the "consent of the

interested" as any manifestation of free will, specific, informed and

unequivocal by which the interested party accepts, either by means of a declaration or a clear affirmative action, the processing of personal data that concerns you.

For its part, article 7.1 of the RGPD establishes that “when the treatment is

Based on the consent of the interested party, the person in charge must be able to demonstrate that the person consented to the processing of their personal data.”

In this line, article 6 of the LOPDGDD establishes that in accordance with

the provisions of article 4.11 of Regulation (EU) 2016/679, means

consent of the affected party, any manifestation of free will, specific,

informed and unequivocal by which it accepts, either by means of a declaration or a

clear affirmative action, the processing of personal data that concerns you.

Article 13 of the RGPD, a precept that determines the information that

must be provided to the interested party at the time of collecting their data, it has:

“1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the treatment to which the personal data is destined and the basis legal treatment;

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

4/7

d) when the treatment is based on article 6, paragraph 1, letter f), the

legitimate interests of the person in charge or of a third party;

e) the recipients or categories of recipients of the personal data,

in your case;

f) where appropriate, the intention of the controller to transfer personal data to a

third country or international organization and the existence or absence of a decision to

adequacy of the Commission, or, in the case of transfers indicated in the

Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the

adequate or appropriate warranties and the means to obtain a copy of these or

to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the

treatment will facilitate the interested party, at the moment in which the data is obtained

personal, the following information necessary to guarantee data processing

fair and transparent

a) the period during which the personal data will be kept or, when not

possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access

to the personal data related to the interested party, and its rectification or deletion, or the

limitation of its treatment, or to oppose the treatment, as well as the right to

data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or the

Article 9, paragraph 2, letter a), the existence of the right to withdraw consent in

any time, without affecting the legality of the treatment based on the

consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or

a necessary requirement to sign a contract, and if the interested party is obliged to

provide personal data and is informed of the possible consequences of

not provide such data;

f) the existence of automated decisions, including profiling, to

referred to in article 22, sections 1 and 4, and, at least in such cases, information

about applied logic, as well as the importance and consequences

provisions of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of

personal data for a purpose other than that for which it was collected,

will provide the interested party, prior to said further treatment, information

for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in

to the extent that the interested party already has the information.

For its part, article 11 of the LOPDGDD, provides the following:

"1. When the personal data is obtained from the affected party, the person in charge

of the treatment may comply with the duty of information established in the

Article 13 of Regulation (EU) 2016/679 providing the affected party with basic information

referred to in the following section and indicating an electronic address or other

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/7

medium that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must be

contain at least:

a) The identity of the data controller and his representative, in his

case.

b) The purpose of the treatment.

c) The possibility of exercising the rights established in articles 15 to 22

of Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for the preparation of

profiles, the basic information will also include this circumstance. In this

In this case, the affected party must be informed of their right to oppose the adoption of

automated individual decisions that produce legal effects on him or her

significantly affect in a similar way, when this right concurs in accordance

with the provisions of article 22 of Regulation (EU) 2016/679.”

III

This claim focuses on the fact that images of the claimant have been published

without consent on the website \*\*\*URL.1.

It also states that both the legal notice and the privacy policy of the

website \*\*\*URL.1 is not in accordance with data protection regulations.

In accordance with the available evidence, it is considered that the

Known facts constitute two infractions attributable to the defendant, one

first offense for a violation of article 6 of the RGPD, for the treatment of

your personal data without your consent, and another second offense for the

violation of article 13 of the RGPD, for lacking the privacy policy of the page

website that is the object of this claim, of the requirements demanded regarding the

treatment of personal data, indicated in the foundation II.

IV

Article 72.1.b) and h) of the LOPDGDD states that “according to what

established in article 83.5 of Regulation (EU) 2016/679 are considered very serious and

Infractions that suppose a substantial violation will prescribe after three years.



of the articles mentioned therein and, in particular, the following:

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law.”

v

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

6/7

Each infraction can be sanctioned with a fine of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate each sanction to be imposed in accordance with the following criteria established in article 83.2 of the RGPD:

As aggravating the following:

☐ In the present case we are dealing with unintentional negligent action, but significant identified assets (article 83.2 b)

☐ Basic personal identifiers are affected -image- (art 83.2

g)

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

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

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., with NIF \*\*\*NIF.1, for the infraction of article 6 of the RGD, a fine of five thousand euros (€5,000), and by article 13 of the RGD, a fine of four thousand euros (€4,000), both typified in article 83.5 of the RGD.

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

THIRD: Warn the sanctioned party that he must enforce the sanctions imposed

Once this resolution is enforceable, in accordance with the provisions of

the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

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

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

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

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

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

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

Otherwise, it will be collected in the executive period.

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

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

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

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

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

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

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

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

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

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

Interested parties may optionally file an appeal for reconsideration before the

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

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

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

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

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

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

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

aforementioned Law.

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

may provisionally suspend the firm resolution in administrative proceedings if the

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

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

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

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)