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Procedure No.: PS/00189/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The Spanish Agency for Data Protection proceeded to open the guardianship of
law, TD/00128/2019, upon learning of the following facts:

On November 23, 2018, D. A.A.A. (hereinafter, the claimant) exercised the
right of suppression before the entity ANMAVAS 61, S.L. (LA CUEVA SEX CLUB) with NIF
B01528736 (hereinafter, the claimed one), without your request having received the
legally established response.

The complaining party provided various documentation on the exercise of the right
exercised.

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On January 15, 2019, this Agency through the Support of the Service of
Electronic Notifications and Enabled Address (Notific@ platform), put to
disposition of the claimed party the claim filed by the claimant and 25 of
January 2019, the data controller accepts the Electronic Notification, to
that within a maximum period of one month the allegations that
consider appropriate, as well as the relevant documentation related to the procedures
carried out to facilitate the right exercised or the reasoned refusal, without having

received in this Agency letter of allegations.

On March 26, 2019, in accordance with article 65.4 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of the digital rights and for the purposes provided in article 64.2, the Director of the Spanish Agency for Data Protection agreed to admit the claim for processing presented by the claimant party against the claimed party and it is agreed to transfer the claim, so that within a period of fifteen business days present the allegations that considers convenient and the parties are informed that the maximum to resolve the procedure will be six months.

On April 4, 2019, this Agency through the Support of the Service of Electronic Notifications and Authorized Address (Notific@ platform), put again at the disposal of the claimed party the claim filed by the party claimant and on April 5, 2019, the data controller accepts the Electronic Notification, so that within a maximum period of fifteen present the allegations that they consider convenient, without having received in this Agency a written allegations.

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SECOND: The Director of the Spanish Agency for Data Protection, issued on July 23, 2019, legal protection resolution TD/00128/2019, proceeding to "estimate the claim made by D. A.A.A. and urge the claimed party so that, within the period of ten business days following the notification of this resolution, send to the party claimant certification stating that he has complied with the right of deletion

exercised by it or is denied for reasons indicating the reasons why the

requested deletion. The actions carried out as a result of this Resolution

They must be communicated to this Agency within the same period. Failure to comply with this resolution

could entail the commission of the offense typified in article 72.1 m) of the LOPDGDD,

to be sanctioned, in accordance with art. 58.2 of the RGPD”.

Said agreement was notified through the Notification Service Support

Electronic and Authorized Address (Notific@ platform) to the claimed party, stating

as not withdrawn on August 4, 2019.

THIRD: Dated August 29, 2019 and February 25, 2020, it was received at this Agency

two separate writings of the claimant in which he states that after the periods granted

the party claimed failed to comply with the aforementioned resolution.

Despite having estimated the resolution regarding the right of suppression that was not

attended, the claimed party continues without attending it.

The claimant requested the right of deletion, therefore, he claims that this Agency

act accordingly.

FOURTH: The claimed entity has not sent the claimant a certification in which it does

state that you have attended to the right of deletion exercised by it or it is denied

reasoned indicating the reasons why the requested deletion does not proceed, despite the

legal guardianship decision TD/00128/2019 issued by the Director of the Agency

Spanish Data Protection.

FIFTH: On July 1, 2020, the Director of the Spanish Agency for the Protection of

Data agreed to initiate a sanctioning procedure against the defendant, for the alleged violation of the

Article 58.2 of the RGPD, typified in Article 83.5 e) of the

GDPR.

Said agreement was notified through the Notification Service Support

Electronic and Authorized Address (Notific@ platform) to the claimed party, stating

as not withdrawn on July 12, 2020.

SIXTH: Formal notification of the initiation agreement, the one claimed at the time of this

The resolution has not presented a brief of allegations, for which what is indicated in

Article 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of

the Public Administrations, which in its section f) establishes that in case of not carrying out

allegations within the period provided on the content of the initiation agreement, it may be

considered a resolution proposal when it contains a precise pronouncement about

the imputed responsibility, for which a Resolution is issued.

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: On November 23, 2018, the claimant exercised the right to suppress

before the claimed, without your request having received the legally established response.

SECOND: The claimed entity has not sent the claimant a certification in which it does

state that you have attended to the right of deletion exercised by it or it is denied

reasoned indicating the reasons why the requested deletion does not proceed, despite the

legal guardianship decision TD/00128/2019 issued by the Director of the Agency

Spanish Data Protection.

THIRD: On July 1, 2020, this sanctioning procedure was initiated for the infraction of the

article 58.2 of the RGPD, being notified on July 12, 2020. Not having made

allegations, the one claimed, to the initial agreement.

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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 Agency Spanish Data Protection is competent to resolve this procedure.

Article 58 of the RGPD, "Powers of Attorney", says:

II

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

listed below:

(...)

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this

Regulation;

(...)

d) order the person responsible or in charge of the treatment that the treatment operations be comply with the provisions of this Regulation, where appropriate, of a given manner and within a specified time.

(...)

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, depending on the circumstances of the particular case.

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III

The RGPD deals in its article 58 with the powers of each control authority. The

section 1.a) provides:

"1. Each control authority will have all the investigative powers indicated

next:

a) order the person in charge and the person in charge of the treatment and, where appropriate, the representative of the person in charge or the person in charge, who provide any information required for the performance of their duties.

The infraction for which the claimed entity is held responsible is typified

in article 83 of the RGPD that, under the heading "General conditions for the imposition of administrative fines", states:

"5. Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of 20,000,000 Euros or, in the case of a company, of an amount equivalent to a maximum of 4% of the total turnover annual global of the previous financial year, opting for the highest amount:

e) Failure to comply with a resolution or a temporary or definitive limitation of the treatment or suspension of data flows by the control authority with under Article 58(2) or failing to provide access in breach of Article 58, Paragraph 1."

Organic Law 3/2018, on the Protection of Personal Data and Guarantee of Rights (LOPDGDD) in its article 72.1 m), under the heading "Infringements considered very serious" provides:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned in it and, in particular, the following:

(...)

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

competent data in exercise of the powers conferred by article 58.2 of the Regulation (EU) 2016/679.”

IV

In the case analyzed here, it has been proven that the claimant exercised his right of deletion before the claimed entity, your request did not get the answer legally required.

Likewise, after the evidence obtained, there is no evidence that the defendant attended the right of the claimant, as required by the Director of the Protection Agency of Data, in the approving resolution of the protection of right TD/00128/2019, consisting of

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send the claimant a certification stating that he has fulfilled the right to deletion exercised by it or denied for reasons, it must be considered that the entity claimed violated article 83.5.e) of the RGPD, which sufficiently motivates this penalty procedure.

It is recorded that on August 4, 2019, the resolution of legal guardianship was notified to the claimed party, urging it so that, within the following ten business days, it sends to the claimant certification in which it is stated that he has fulfilled the right of suppression exercised by it, or is denied for reasons indicating the reasons why the requested deletion, however, it has not been verified that it has proceeded in any of both ways.

It must be stated that the claim was notified to the respondent on 15

January and April 4, 2019, with the date of acceptance being January 25 and April 5

of the same year.

On July 24, 2019, the respondent is reiterated compliance with said resolution stating as date of receipt and not withdrawn on August 4, 2019.

On July 12, 2020, the agreement to initiate this procedure was notified sanctioning party, without having made allegations to it.

v

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

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

“Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures referred to in article 58, section 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount

In each individual case, due account shall be taken of:

- a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the treatment operation in question as well as the number of interested parties affected and the level of damages they have suffered;
- b) intentionality or negligence in the infringement;
- c) any measure taken by the person responsible or in charge of the treatment to alleviate the damages suffered by the interested parties;
- d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures they have applied under articles 25 and 32;
- e) any previous infringement committed by the person in charge or the person in charge of the treatment;
- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the potential adverse effects of the breach; g) the categories of data

personal character affected by the infringement;

g)

in particular whether the controller or processor reported the breach and, if so, to what extent;

the way in which the supervisory authority became aware of the infringement, in

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adherence to codes of conduct under article 40 or mechanisms of

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when the measures indicated in article 58, paragraph 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the same

matter, compliance with said measures;

i)

certification approved in accordance with article 42, and

k)

any other aggravating or mitigating factor applicable to the circumstances of the case,

as the financial benefits obtained or losses avoided, directly or indirectly, through

through the infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76, “Sanctions and corrective measures”, provides:

“two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a)

b)

The continuing nature of the offense.

Linking the activity of the offender with the performance of treatments
of personal data.

c)

d)

The profits obtained as a result of the commission of the infraction.

The possibility that the conduct of the affected party could have induced the
commission of the offence.

and)

The existence of a merger by absorption process subsequent to the commission of
the infringement, which cannot be attributed to the absorbing entity.

F)

g)

data.

The impact on the rights of minors.

Have, when it is not mandatory, a delegate for the protection of

g)

The submission by the person in charge or person in charge, with
voluntary, to alternative conflict resolution mechanisms, in those cases in which
that there are controversies between them and any interested party.”

In accordance with the precepts transcribed, in order to set the amount of the sanction of
fine to be imposed in this case on the entity claimed as responsible for a
infringement typified in article 83.5.e) of the RGPD, the following are considered concurrent
factors:

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The intention or negligence of the infringement (83.2b) of the RGPD.

Basic personal identifiers (83.2 g) RGPD are affected.

The sanction to be imposed on ANMAVAS 61, S.L. (LA CAVE SEX CLUB) with

NIF B01528736 and set it at the amount of €2,000 for the violation of article 58.2 of the RGPD.

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

Spanish Data Protection RESOLVES:

FIRST: IMPOSE ANMAVAS 61, S.L. (LA CUEVA SEX CLUB), with NIF

B01528736, for an infringement of Article 58.2 of the RGPD, typified in Article 83.5 of the GDPR, a fine of two thousand euros (2,000 euros).

SECOND: NOTIFY this resolution to ANMAVAS 61, S.L. (THE CAVE SEX CLUB).

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

This resolution is executive, in accordance with the provisions of art. 98.1.b) of the law

39/2015, of October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter LPACAP), within the voluntary payment period 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, by entering, indicating the

NIF of the sanctioned and the procedure number that appears in the heading of this

document, in restricted account number ES00 0000 0000 0000 0000 0000, opened in the name of

the Spanish Agency for 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 voluntary payment will be until the 20th day of the following or immediately following business month, and if it is between the 16th and last day of each month, both inclusive, the payment term will be until the 5th of the second following or immediately following business month.

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 Agency

Spanish Data Protection Authority within a month from the day following the

notification of this resolution or directly contentious-administrative appeal before the Chamber

of the Contentious-administrative of the National High Court, in accordance with the provisions of the

article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13

July, regulatory of the Contentious-administrative Jurisdiction, in the term of two months to

count 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 interested party

expresses its intention to file a contentious-administrative appeal. If this is the case,

The interested party must formally communicate this fact in writing addressed to the Agency

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

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

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also

transfer to the Agency the documentation that accredits the effective filing of the appeal

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contentious-administrative. If the Agency was not aware of the filing of the

contentious-administrative appeal 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

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