 Procedure No.: PS/00024/2020

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

In the sanctioning procedure PS/00024/2020, instructed by the Spanish Agency for Data Protection, to the entity XFERA MÓVILES, S.A. (MASMOVIL) with CIF: A82528548, (hereinafter, "the entity claimed"), by virtue of the complaint filed by Mrs. A.A.A. “the claimant”), and based on the following,

BACKGROUND

FIRST: On 02/25/19, you entered this Agency in writing, submitted the claimant, in which he stated, among others, the following:

“On 05/19/17 a contract was formalized with “Mas Móvil”. The landline of the contract ***TELEPHONE.1 the internet voice line never worked.

We have made several claims without the voice line being up to date. functioning.

I filed a claim with the telecommunications organization in which it comes to recognize in the resolution that "Mas Móvil" had breached the contract for not giving voice line by not having activated the fixed voice service in breach of the period of time of supply referred to in the contract, without anything proving to the contrary "More Mobile, recognizing my economic right to compensation and penalty according to contract, being accredited in the claim the existence of a breach contract and some damages acknowledging the right to cancel the telephone service without paying any attention to a first logalty burofax sent on 06/28/18, which is rejected due to incorrect address, on 07/11/18, another one is sent in the same terms. So, surprisingly I have received two payment requests threatening me that if I do not make the payment, they will include me in the file of

delinquent”.

The following documentation is attached to this complaint letter:

- Copy of the contract with MAS MOVIL dated 05/19/17 contracting the services

and lines: ***PHONE.2, ***PHONE.3, ***PHONE.4, fiber, ***PHONE-

PHONE.1. In the general contracting conditions it is stated: “MORE-

MÓVIL will activate the Fixed Telephone and Broadband Internet Services within a

maximum of thirty (30) calendar days from the acceptance by the Client of this

tas CGC (...). Failure to comply with the aforementioned supply time commitment

of initial connection by MÁSMÓVIL will mean compensation to the

Client (…)".

- Proof of delivery on 07/19/17 of burofax sent to MAS MOVIL with,

among others, the following manifestations: a). Who made the claims:

*** CLAIM.1 dated 05/27/17 indicating that they were without te-

fixed lefonic; b). MORE *** CLAIM.2 dated 06/01/17 insisting on

to send a technician; c). MORE *** COMPLAINT.3 dated 06/05/17 in-

persisting because they continue without sending anyone; d). MORE ***CLAIM.4 of

date 07/12/17 repeating the entire process; e) That require the problem to be solved

problem with voice line ***PHONE.1

- Resolution of the Secretary of State for the Information Society and

Digital Agenda dated October 4, 2017 ***FILE.1 in relation to

the line ***TELEPHONE.1 in which it is resolved: “Estimate the claim, reco-

noticing the right of the interested party to request cancellation of the contract effectively

immediately as well as not to pay the billing issued by MAS MOVIL TELE-

COM 3.0 S.L. corresponding to the fixed telephony service during the period in

that the contracted service is not effectively provided.

- Certificate of delivery dated 07/11/18 of a letter sent by the claimant and

intended for the claimed, where among others, indicates: a). it's your decision

terminate the contract; b). that this decision was communicated by telephone on

day 06/12/18; c). that by virtue of the resolution favorable to the claimant in the former

file RC ***FILE.1 must proceed to the economic settlement in

relation to the 10% discount that the operator assumes in his report and

unduly charged while a mobile line was down ***TELEPHONE.3

from 04/15/18 as well as the compensation contemplated in the contract

deal.

- Payment request dated 01/08/19 addressed to the claimant and being

MAS MOVIL sender, in which, among others, the following manifestations are carried out:

festivities: a). that this is in the nature of a request for payment to the

Effects of the possible inclusion in capital solvency and credit files

(ASNEF and BADEXCUG); b). proceed to deposit the amount of €197.01.

- Certificate of delivery dated 01/28/19 of a letter sent by the claimant-

and intended for the claimed with, among others, the following statements:

a). that has received a payment request on 01/10/19, with a threat in

In case of not paying the money claimed, to include it in ASNEF and BA files.

DEXCUG; b). that they must identify the debt claimed with what benefit

of services corresponds and period; c). that after the favorable resolution

ble of Telecommunications in the file ***EXPEDIENTE.1, notified them of the

cancellation of the contract ***CONTRATO.1 and that they pay the amount owed for non-compliance

I lie.

SECOND: In view of the facts set forth in the claim and the documents

provided by the claimant, the General Subdirectorate for Data Inspection proceeded

to carry out actions for its clarification, under the powers of

investigation granted to the control authorities in art. 57.1 of the Regulation

(EU) 2016/679 (GDPR). Thus, with dates 04/10/19, 10/09/19, requirements are directed

information to the claimed entity.

THIRD: On 10/30/19, the claimed entity sends to this Agency, among

others, the following information:

“After carrying out the appropriate checks, we verified that the withdrawal was processed and

issued credits corresponding to the issued invoices that were not applicable. under

of the foregoing, MÁSMÓVIL considers rejecting the claim of the

Client, for considering it already taken care of”.

The following documentation is provided: Proof of payments made in favor of the

claimant (11/28/18); Response given to your request on 04/01/19 and the

record affecting the interested party

FOURTH: In view of the facts set forth in the claim and the documents

provided by the claimant, the General Subdirectorate for Data Inspection proceeded

to carry out actions for its clarification, under the powers of

investigation granted to the control authorities in art. 57.1 of the GDPR. So with

Date 01/17/20, information requests are directed to the entity claimed,

requesting that it report on the "Documentation proving that the claimant did not
has pending debts with XFERA MÓVILES, S.A. (MASMOVIL) and that he is not
included in default files. Otherwise, provide documentary evidence of the
debt taking into account the resolution RC ***FILE.1 dated October 4
of 2017 of the Secretary of State for the Information Society and the Agenda
Digital".

FIFTH: On 02/03/20, the entity claimed, sends to this Agency, between
others, the following information:

“Regarding whether the claimant has outstanding debts with XFERA, we indicate
that, since 01/31/19, the date on which the forgiveness of debts was made, said
natural person does not have any type of debt with XFERA, attaching as
document nº 1 the accounting statement of the claimant.

In relation to the inclusion of the claimant in asset solvency files,
from the MASMOVIL brand there has been no inclusion of the
data of the claimant in delinquent files”.

SIXTH: In view of the reported facts, the documentation provided by the
parties and in accordance with the evidence available, the Data Inspection
of this Spanish Data Protection Agency considered that the actions of the
entity claimed did not meet the conditions imposed by the regulations in force, therefore
that the opening of a sanctioning procedure proceeds. Thus, on 03/13/20, the
Director of the Spanish Agency for Data Protection agreed to initiate a procedure
sanctioning the claimed entity, by virtue of the established powers, for
Failure to comply with the provisions of article 6 of the RGPD, on the legality of the treatment of the
personal data, punishable in accordance with the provisions of art. 83 of the aforementioned RGPD,
with an initial penalty of 60,000 euros, arguing therein that:

“The claimant contracted, with the Mas Móvil company, telephony services that

in the end they were not discharged. Given this, the claimant filed a complaint with Secretary of State for the Information Society and the Digital Agenda, being its approving resolution, declaring in it your right to cancel the services, reimbursement of money paid on invoices and the right to compensation for damages caused by the company. This resolution was attended by the entity, but a few months later, the claimant received a letter of prior request from payment, for services that should have already been canceled"

SEVENTH: Once the initiation agreement has been notified, the entity claimed, by means of a letter of dated 04/06/20, made, in summary, the following allegations to the initiation:

“The claimant signed a contract for the provision of telecommunications services dated May 19, 2017, being discharged since May 24, 2017.

Specifically, it was a convergent contract that included the provision of landline services, 3 mobile phone lines and Internet access, circumstance that has been accredited before this Agency by the claimant.

Of the contracted services, the only one that did not work correctly for a time (until June 2017) was the fixed telephony service, but not the rest of services, which were provided normally from the beginning.

As has been proven, the interested party complained to the SESIAD, facilitating the RC reference ***FILE.1. This body resolved, in what refers to the service of fixed telephony, dated October 4, 2017, as reproduced by this Agency in its initiation agreement in the following terms: “Estimate the claim,

recognizing the right of the interested party to request cancellation of the contract effectively immediately as well as not to pay the billing issued by MAS MOVIL TELECOM 3.0 SL corresponding to the fixed telephony service during the period in which the service contracted is not actually provided".

We are not aware that there was an incident in the fixed telephony service on the date after June 2017, in fact, this service was used without incident until July 2018, as can be verified in the invoices issued by this party, in which it can be verified that there was traffic of calls in transmission until July 2018, which we provide as documents No. 1 and 2

As the interested party herself has proven, the right to request withdrawal recognized by the SESIAD was not exercised until July 11, 2018, having used the services of mobile, fixed and fiber telephony to date, which worked correctly, as it is accredited in the already referenced documents no. 1 and 2.

However, prior to that date, the mobile lines were ported to other operators in April 2018 and June 2018, leaving as the only active service the fiber and fixed telephony in July 2018, billing this service in August 2018 (document #2).

On September 21, 2018, my client proceeded to pay €299.21 in favor of the claimant and proceeded to cancel the services maintained until time by the claimant, although the fixed telephone service was not deactivated at that time. moment, presumably due to an error when managing the cancellation of the service Internet access.

Finally, on January 28, 2019, the claimant received a letter requesting the payment of 197.01 euros (corresponding to the landline telephone service), warning that in case of not paying the amounts claimed, it could be included in ASNEF and BADEXCUG files. This circumstance is reported to me

represented by burofax on January 29, 2019 proceeding to the cancellation

of the debt dated 01/31/19.

As proven by both the claimant and this party, the contract

It included a convergent offer of mobile telephony (3 lines), landline and fiber. This contract

was modified in successive moments: in April the line ***TELÉFONO.3 was ported and

in June the lines ***TELÉFONO.2 and ***TELÉFONO.4. Later, in July,

terminated the Internet access service through burofax of the interested party and

router return.

These successive changes and the continuous separation of services from the contract

convergent presumably motivated the fixed telephony service not to be

successfully deregistered, so it continued to be billed and, upon reaching the limits

contractually foreseen in November, the debt was claimed in

January. Given this claim, the interested party sent us a burofax on January 29,

proceeding at that time my represented, reviewing the case and realizing the

situation, to cancel the debt on January 31.

At no time has the claimant's data been communicated to

Common asset solvency files. The details of the claimant consist of

blocked since January 2019.

This Agency attributes to my client an infringement of article 6 of the Regulation

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

to the protection of natural persons with regard to data processing

data and the free movement of these data and by which the Directive is repealed

95/46/CE (General Data Protection Regulation, or RGPD).

As explained in the first allegation and verified by this Agency, the

The claimant had a contract to provide telecommunications services

with my client since May 19, 2017, requesting its resolution in July

2018, when the claimant sent a burofax to my client, and resolving the

telecommunications contract in September 2018, the date on which they were settled

amounts in favor of the claimant.

As we have explained, due to an error when canceling the telephone service

fixed, motivated by the successive modifications in the object of the contract,

continued incorrectly billing this service until November, claiming the

debt in January. At that time, the claimant sent us a burofax on January 29

and dated January 31, acting diligently being aware of what happened,

My client proceeded to cancel the debt, lower the service of

fixed telephony and data blocking.

In this sense, in accordance with section b) of article 6.1 of the RGPD, the treatment of

data of the claimant was necessary for the execution of the contract for the provision of

telecommunications services that it has maintained with my client until

September 2018 (erroneously extending to January 2019, as we have

explained) and therefore, it is a legitimate treatment.

The existence of a SESIAD resolution recognizing the interested party's right

to request termination of the contract in October 2017 is irrelevant for these purposes, since

the claimant having exercised such right until July 2018 (9 months later) and

have enjoyed the services, including fixed telephony, up to that time,

as can be verified through the consumption of fixed telephony services in the

document no. 1 and 2.

Among the obligations derived from the contract, is the payment of the

services received and the claim for such payment is covered by the interest

legitimate interest of the creditor (art. 6.1.f))

Considering that the request to cancel the service occurred in July 2018,

correctly billing the last services in August, as can be seen

in document no. 2, settling amounts in favor of the claimant at the end of

September 2018, we do not appreciate the continuing nature of the infringement, as we do not

Not even 6 months have elapsed between the resolution and the claim. especially when my

represented proceeded to block the personal data of the interested party within the period

48 hours from when he became aware of the inadmissibility of the claimed debt

in January.

It is also worth mentioning that my client also has the obligation to

keep the data of the interested party, in a blocked way, in order to attend

legal obligations of various kinds, such as tax, accounting or

responsibilities arising from the processing of data, such as this one, this being

Legitimate treatment in accordance with the provisions of article 6.1.c) of the RGPD.

Therefore, in the opinion of this representation, there is no violation of the

art. 6 of the RGPD nor violation of article 5.1.a), of the RGPD, which establishes that: “The

personal data will be processed lawfully, loyally and transparently in relation to the

interested party”, having acted in any case under a contract signed with the

interested, keeping the data in a blocked form from January 31, 2019 to

the mere effects of meeting legal obligations.

EIGHTH: On 06/08/20, the test practice period began,

remembering: a).- to consider reproduced for evidentiary purposes the complaint filed

by the complainant and her documentation, the documents obtained and generated that

are part of file E/3879/2019 and b).- consider reproduced for purposes

evidence, the allegations to the initiation agreement of PS/00024/2020, presented by

the reported entity.

NINTH: On 07/22/20, the respondent entity is notified of the proposed re-

solution in which it is proposed that, by the Director of the Spanish Agency for Protection

tion of Data is sanctioned to the entity XFERA MÓVILES, S.A. (MASMOBIL) for a

infringement of article 6), in relation to 5.1.a), of the RGPD, with a fine of 60,000

(sixty thousand euros), in accordance with the provisions of article 58.2) of the aforementioned

GDPR.

TENTH: After notification of the proposed resolution, dated 08/05/20, the en-

The entity claimed submits a brief of allegations, in which, among others, it indicates:

This Agency affirms the following as proven facts:

“The claimant contracted, with the Mas Móvil company, telephony services that

in the end they were not discharged. Given this, the claimant filed a complaint with

Secretary of State for the Information Society and the Digital Agenda, being its

approving resolution, declaring in it your right to cancel the services,

reimbursement of money paid on invoices and the right to compensation for

damages caused by the company. This resolution was attended by the entity,

But a few months later, the

claimant received a letter of prior request for payment, for some services that

They must have already been discharged.”

These facts described are not correct for the following reasons:

1. The fixed telephone service was correctly registered, but it suffered an incident technical problem from its activation date, which was later resolved, as as can be verified in the invoices provided to the allegations made to the start, in which it can be verified that the fixed line has traffic. It has been given by good a statement made by the claimant in the complaint without taking into account the evidence presented by my client.

2. Internet access and mobile telephony services were provided correctly and without incident from May 24, 2017 until his discharge.

3. Certainly the SESIAD recognized on October 4, 2017 the right of the interested to unsubscribe from the services with immediate effect at that time, with reasons of the technical incidence, as well as not paying for the service object of the incidence, is that is, the fixed telephony service, but not the others included in the convergent offer that were being provided normally. In this sense, we consider that it is relevant differentiating the recognition by the SESIAD to the interested party of a right cho, in this case to request the cancellation, of the obligation to cancel, which in this case never ruled.

4. The claimant did not exercise her right to request removal due to that incident despite, as we have seen, being entitled to it, until July 2018, in fact, remained registered making normal use of the services for several more months since October. We reiterate, what the SESIAD recognizes is a right to give lowers the consumer without penalty for it, not an obligation for my client

to terminate the claimant. So the phrase “This resolution was heeded

by the entity, but a few months later” is completely untrue and presumes

the breach by my client of the resolution of the SESIAD, which

It is uncertain. The withdrawal comes as a result of the request of the interested party of 11

July 2018, not as a consequence of the SESIAD resolution, in which, repeatedly

In our opinion, a right is recognized for the interested party, not an obligation for my client. In

In this sense, we believe it is important to show that all our clients have

They have the right to unsubscribe at the time they decide (it is a recognized right).

legally known to consumers), it is not necessary to rely on a resolution

of the SESIAD for it.

5. The resolution of the SESIAD, both as it refers to a technical incident

ca that was resolved (proof of this is that the claimant continued to use

the services of my client for months and the fixed line had traffic, as can be

to be checked on the invoices), is completely irrelevant in relation to the price

present procedure, despite the fact that the claimant mind in her request for withdrawal.

On July 11, 2018, we received a withdrawal request from the claimant. Between July 11

2018 and on September 21, 2018, in response to the claims,

Some billing adjustments that gave rise, on September 21, 2018,

to the payment to the claimant of certain amounts and to the cancellation of services.

Therefore, for these purposes, we agree with this Agency that they are relevant only-

In relation to this procedure, the events that occurred between September 22 and

December 2018 and January 31, 2019, limiting the treatment allegedly

illegitimate two months.

This calculation is made on the basis that the services were terminated in September.

December 2018, generating an invoice for them in October, so that the

issuance of the invoice in October should not be considered illegitimate data processing.

swindle since it refers to services not discharged in September. Post-

Subsequently, two other invoices were issued, in November and December, after which it was

They stopped issuing invoices, proceeding with their claim in January.

Insofar as the January claim refers to four invoices, two of the

which, September and October, would have been issued on data processed

legitimately, my client is presumed to have a legitimate interest in claiming them,

in accordance with article 20 of the LOPD-GDD, not appreciating illegality in the treatment of

data to carry out this claim. Therefore, only the issuance of invoices for

November and December could be considered, where appropriate, illicit data processing

personal.

Continuing with the description of the facts, this Agency indicates that “On 01/28/19, the

claimant receives a letter from the claimed entity in which they are required to pay

197.01 euros with the warning, in case of not paying the claimed money, to include-

it in ASNEF and BADEXCUG files, although it has not been verified that the data

personal data of the claimant were finally included in the financial solvency files.

monial”.

Well, with respect to this matter, we affirm that the claimant's data was not

were not included in any solvency file, likewise, we proceeded to block the

data on January 31, 2019, after XFERA became aware of the situation, without the need

of complaint, requirement, or notification, which we consider very relevant in the

description of the facts that occur in this procedure.

This Agency affirms that “although the treatment was legitimate until 09/21/18, it was not

is, from that date until 01/28/19, because during that time, although it was due to

an error, the fact is that during those 4 months a telephone line was being billed.

nica in the name of the claimant, therefore processing personal data in an unlawful manner,

because they were treated continuously and without consent, since the contract was

terminated months earlier.”

Once again, we find ourselves in the need to qualify this statement. First

a line was not billed in the name of the claimant other than her, but the same line

that had been contracted and that had been activated based on a contract

valid. That is to say, we understand that it is not the same to invoice a line without mediating contra-

contracted or contracted outside the interested party, to invoice and process the data of the interested party.

based on a contract that has been proven to be valid and that the treatment

The process has continued under the terms provided therein.

Also, certainly the number of invoices issued was four, corresponding

to the months of September, October, November and December.

***INVOICE.1 51.19 € ***INVOICE.2 51.19 € ***INVOICE.3 51.19 €

***INVOICE.4 €43.44

The one for the month of September refers to services in August and the one for October

reference to September services, so when unsubscribing the service at the end

of September, the issuance of these invoices cannot be considered a treatment of

illicit data since the contractual relationship was not resolved. This just leaves us

the invoices corresponding to the months of November and December as the only ones

allegedly issued illegally.

Regarding this particular we do not appreciate illegitimacy in the treatment of data

on the basis of a contractual relationship due to an error in the execution of the

resolution of the same, since the data is not treated with a purpose other than the one that came being made during the term of the contract, nor are different data processed, nor in a way ma different from the one that had been done while the contract lasted. As soon As the error was detected, we proceeded, without delay, to cancel the invoices issued after the contractual resolution and restore to the interested party her right, blocking her data cough.

That is to say, in our opinion, a contract does not disappear by its sole resolution, but the relationship between the parties changes after it: the due rights and obligations cease. between the parties, but the responsibilities derived from that contract remain, Therefore, the data processed within the framework of the same, provided that they are processed in the terms and for the purposes of the contract itself cannot be understood as illegal.

A different question would be that my client had treated the data of the complaint- provided on the occasion of the contract for a purpose completely unrelated to her, or she would have communicated them to a third party, which she has not done.

So we understand that the existence of a technical error in the cancellation of one of the services cannot be cause for considering the treatment as illicit, for- that the processing of the claimant's data was not unlawful in origin, nor is it to date today. In this sense, we understand that the treatment should have been cataloged as inaccurate by improperly staying in time, but not illegal because the contract on which it is based does not become illegal after its termination. For this reason the proposal of resolution we understand that it is not formulated on the correct type and therefore, should proceed to file actions by formal default in the typification of the

attributed infringement.

Once the factual and legal foundations of the proposed resolution have been analyzed,

solution, it is necessary to mention that for the purposes of the sanctioning resolution, the

principle of proportionality by which the sanctioning law must be governed, both

criminal as well as administrative, constitutes a limit to the discretion that the laws

know when, as in the case of our Organic Law 3/2018, of December 5,

protection of personal data and guarantee of digital rights, do not determine

sanctions of a fixed amount for each infraction, but rather open up a range of options

tions.

Proportionality is reflected, among other things, in the establishment of circumstances

tions that attenuate or aggravate behavior and, consequently, call for greater rigidity

or laxity of the sanction to be imposed.

In this sense, article 83 of the RGPD provides that administrative fines are imposed

depending on the circumstances of each individual case. [...] When deciding the im-

position of an administrative fine and its amount in each individual case will be

due account:

a) The nature, seriousness and duration of the offence, taking into account the nature

nature, scope or purpose of the processing operation in question, as well as the number

number of affected and the level of damages suffered.

As well:

• The nature of the violation is due to an error. Intentionality cannot be appreciated

in the facts that are the subject of this proceeding. At all times my represented has in-

tried to look for the cause that has motivated the denounced facts and it can only be attributed

them to a technical error. • The duration of the offense is really limited to 2 months,

As we explained above, not 6 months as indicated in the start-up agreement.

tion, nor to 4 as mentioned in the motion for a resolution. • The number of affected

two is limited to a single person. • No damage can be seen in the affected one, since

your data was not communicated to any financial solvency file and, as soon as

As evidence of what happened was known, the debt was canceled and the

your personal data, not having proven any damage to the interested party

derived from the circumstances that motivate this procedure.

b) The intentionality or negligence of the infraction. The infringement can only be attributed to the

negligence arising from an involuntary and fortuitous error. c) Any action taken

by the person responsible to alleviate the damages suffered by the interested party. So

As soon as my client became aware of the existence of the error that caused

the facts that are the object of this proceeding, proceeded, without delay, within a period of 48

hours from receipt of the claimant's burofax, to correct the situation. In

In this sense, we proceeded to cancel all the invoices issued unduly.

you and the blocking of the data of the interested party. d) The categories of character data

staff affected by the violation. The categories of data affected by the infringement

tion are limited to identification and contact data, special categories are not treated

of data, neither location data, nor traffic. These data have not been the object of

communication or treatment in terms other than those of the contract itself. and)

The way in which the supervisory authority became aware of the infringement, that is by

complaint. However, it should be mentioned that the complainant's data had been

blocked and the debt canceled almost a month before Mrs.

A.A.A. filed a complaint with this Agency.

With regard to the possible continuing nature of the offense mentioned above,
lately in the motion for a resolution, only to mention that in order for the infraction to be
can be considered as continuous requires the occurrence of a plurality of infractions
tions. This is the result of the provisions of article 29.6 of the LRJSP, they require that "a
plurality of actions or omissions that violate the same or similar precepts ad-
ministerial". Indeed, it is necessary to identify various infringements in order to
conclude, subsequently, that they should be considered, jointly, as a
single continuous infraction, which is not mentioned at any time.
Likewise, the continued infringement requires fraud in the commission of the infringements that
are grouped into a continuing offense. This has been recognized, in a special way,
cially illustrative, in the Judgment of the Contentious-Administrative Chamber of the
National Court, of June 10, 2013. In the case at hand, it is not appreciated
fraud in any case, so it is not possible to appreciate continued infringement either.
Additionally, it should be mentioned that it is completely contrary to the principle of pro-
proportionality and coherence classify and sanction infractions in the same way
relating to data processing that have never had a legitimate basis
tion and infractions related to treatments that, being originally lawful, by
causes beyond the control of the person in charge, become presumably illicit,
as in the case at hand.
Thus, for example, in PS/00114/2019, the processing of data without a base is proven.
of legitimation by negligence in a case of usurpation of personality imposing
imposing a fine of 55,000 euros. In other words, illicit data processing from its
same start is sanctioned with an amount lower than the proposal in the event that
occupies us.

Similarly, in PS/00429/2019, the person responsible is sanctioned with 60,000 euros.

of the treatment considering that by the documentation that works in the file

offers evidence that the claimed party violated article 6.1 of the RGPD, since

there was a fraud in the contracting, as well as in the request for the order that was

made on behalf of the claimant without his consent. That is, a penalty

equal to the proposal in a case in which contracting fraud is proven

than in the case at hand, in which the hiring and processing of lawful data.

From the foregoing, it can only be concluded that, in the event that this Agency appreciates, despite the

allegations made, infringement of article 6 by my client, the sanction

tion must be graded in light of the above, since there are no circumstances

aggravating, but there are extenuating ones that have not been taken into consideration, which makes

A consequent gradation of the proposed sanction is necessary.

For these reasons, I REQUEST THE SPANISH DAMAGES PROTECTION AGENCY

TOS, who is kind enough to admit this writing, due to the presentation of allegations before the

sanctioning procedure of reference and proceed to file the actions following

against my client, or, failing that, to grade the sanction in light of the arguments

exhibits and evidence.

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

The claimant contracted, with the company Mas Móvil, telephony services that at

In the end, they were not discharged. Given this, the claimant filed a complaint with

Secretary of State for the Information Society and the Digital Agenda, being its

approving resolution, declaring in it your right to cancel the services,

reimbursement of money paid on invoices and the right to compensation for

damages caused by the company. This resolution was attended by the entity,

but a few months later, the claimant received a letter of prior request from

payment, for some services that must have already been canceled. The sequence of

facts, it clarifies:

1º.- On 05/19/17, the claimant formalized a contract with “Mas Móvil”, contracting the

fixed and mobile services and lines: ***PHONE.2, ***PHONE.3, ***PHONE.4,

fiber, ***PHONE.1.

2º.- On 07/19/17, the claimant sends a burofax to the claimed entity, with the

following manifestations:

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a). That he made the claim No. ***CLAIM.1, dated 05/27/17, in-

stating that they were without fixed telephone service since the installation of the line

on 08/19/17;

b). That he made the claim no. ***CLAM.2, dated 06/01/17, in-

insisting that they send a technician to repair the fixed line;.

c). That he made the claim No. ***CLAM.3, dated 06/05/17, in-

persisting because the company still does not send anyone to repair the

line;

d). That he made the claim no. ***CLAM.4, dated 07/12/17, re-

beeping the whole process.

-

e) On 07/19/17, the problem with the voice line is required to be solved

***TELEPHONE 1.

4º.- On 08/17/17, the claimant files a complaint with the SESIAD for these facts, and indicating that, “the fixed line service has not yet been registered with the entity claimed”.

5º.- On 10/04/17, the SESIAD estimates the claim presented by the claimant in the that recognizes your right to unsubscribe from the service, in addition to receiving a compensation for the damage caused.

6º.- On 07/11/18, the claimant sends a burofax to the claimed entity, attaching the resolution of SESIAD and indicating its decision to terminate the contract and requiring the return of the amounts unduly collected.

7º.- On 09/21/18, the claimed entity makes the payment of the amounts unduly charged to the claimant for a value of 299.21 euros and indicates that This act produces "the loss of the services of the claimant".

8º.- On 01/28/19, the claimant receives a letter from the entity claimed in which require the payment of 197.01 euros with the warning, in case of not paying the money claimed, to include it in ASNEF and BADEXCUG files, although it has not been verified that the personal data of the claimant were finally included in the files equity solvency.

9º.- On 01/29/19, the claimant sends a burofax to the entity claimed denouncing the facts indicated in the previous point.

10º.- According to the claimed entity, since 01/31/19, the date on which the

forgiveness of debts, the claimant does not have any type of debt with XFERA.

FOUNDATIONS OF LAW

The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD in

the art. 47 of LOPDGDD.

The joint assessment of the documentary evidence in the procedure brings to

knowledge of the AEPD, a vision of the denounced action that has been

reflected in the facts declared proven above reported.

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II

However, regarding the allegations presented by the entity complained against, it must be

qualify the following:

The entity claimed stated that, after receiving the burofax from the claimant, the day

07/11/18, with the resolution of the SESIAD and the indication by it, to rescind

the contract with the company, dated 09/21/18, proceeded to the payment of €299.21, in

favor of the claimant and to cancel her from the services maintained up to the moment

with them, but admits that, "the landline service was not deactivated in that

moment, presumably due to an error when managing the cancellation of the service

Internet access".

Well, as the company acknowledges, on 09/21/18 it should have removed the data from the

claimant of their systems but that, "due to an error when managing the cancellation"
this did not occur.
Well, the personal data of the claimant was in the possession of the company
from that date inappropriately outside or not due to an error in its management.
But even more serious was the fact that, 4 months later, on 01/28/19, the claimant
received a letter from the entity, requesting the payment of 197.01 euros, and warning it
that, “in the event of not paying the amounts claimed, it could be included in the files
ASNEF and BADEXCUG”, and therefore, making an illegitimate treatment of the data
claims, even if it were only the fact of using them to
send the request.
Given this situation, the company alleges that, "due to the existence of successive
changes in the management of the claimant's lines presumably motivated
fixed telephony service was not terminated correctly, so it continued
being invoiced and, upon reaching the contractually established limits in November,
proceeded to claim the debt in January. Faced with this claim, the interested party
sent us a burofax on January 29, proceeding at that time to review the case
and become aware of the situation, to cancel the debt on January 31”.
Well, from 09/21/18 to 01/31/19, 4 months and 9 days, the company had in
his power and I treat some personal data without legitimacy for it, even if he is right
in its allegations when it indicates that it has, "the obligation to keep the data of
the interested party, in a blocked way, in order to meet legal obligations of
diverse nature, such as tax, accounting or responsibilities
arising from the processing of data (...)”, but not so, for the purpose for which
were finally treated and that it was, as has been verified, to continue billing
the fixed line not canceled on the day and for sending the payment request.
Regarding the amount of the sanction, the sanction of 60,000

euros due, as stated in the opening of the file, to the duration of

the infraction, 4 months and 9 days and its continuous nature; to unintentional negligence

Of the same; to the category of data illicitly processed and managed; to the way

that the control authority was aware of the infraction and above all to the

linking the activity of the offender with the performance of data processing

personal, since the company is a large company that manages and treats a

enormous amount of personal data, special diligence must be required in the

treatment of customer data.

In view of the foregoing, the following is issued:

:

RESOLVE

FIRST: IMPOSE the entity XFERA MÓVILES, S.A. (MASMOVIL) with CIF:

A82528548, a penalty of 60,000 euros (sixty thousand euros), for violation of article

the 6 of the RGPD

SECOND: NOTIFY this resolution to the entity XFERA MÓVILES, S.A.

(MASMOVIL) and INFORM the claimant about the result of the claim.

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

Once this resolution is executed, in accordance with the provisions of art.

Article 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co-

Public Administrations (LPACAP), within the voluntary payment period that

points out article 68 of the General Collection Regulations, approved by Royal De-

decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of 17

December, by depositing it in the restricted account number ES00 0000 0000 0000 0000

0000, opened in the name of the Spanish Agency for Data Protection in the Bank

CAIXABANK, S.A. or otherwise, it will be collected in the executable period.

crop.

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

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.

In accordance with the provisions of article 82 of Law 62/2003, of December 30,

bre, of fiscal, administrative and social order measures, this Resolution is

will make public, once it has been notified to the interested parties. The publication is made

will be in accordance with the provisions of Instruction 1/2004, of December 22, of the Agency

Spanish Data Protection on the publication of its Resolutions.

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

established in articles 112 and 123 of the LPACAP, the interested parties may interpose

have, optionally, an appeal for reconsideration before the Director of the Spanish Agency

of Data Protection within a period of one month from the day following the notification

fication of this resolution, or, directly contentious-administrative appeal before the

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

placed in article 25 and in section 5 of the fourth additional provision of the Law

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

two months from the day following the notification of this act, according to

the provisions of article 46.1 of the aforementioned legal text.

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 do states its intention to file a contentious-administrative appeal. Of being 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 Re- Electronic Registry of the Agency [https://sedeagpd.gob.es/sede-electronicaweb/], or to 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 that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive 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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