 Procedure No.: PS/00013/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and

based on the following

BACKGROUND

FIRST: Don A.A.A. (hereinafter, the claimant), dated October 23

2019, filed a claim with the Spanish Data Protection Agency. The

claim is directed against Doña B.B.B.. The reasons on which the claim is based

are that Doña B.B.B., in her Tweeter profile ***PERFIL.1, has publicly revealed

personal data of third parties. In the concrete in the following tweet, published

on ***DATE.1 at 4:32 p.m.: ***TWEET.1. He understands that this violates the Law of

Personal data protection.

In the tweet, and in two others posted by two other featured members

of the party, the first name of the marriage that has leased a dwelling is indicated.

day and the name and first surname of the owner of the dwelling. They go to the property

taria saying: "You XXX..."

SECOND: Prior to the acceptance of this claim for processing,

transferred to Doña B.B.B., in accordance with the provisions of article 65.4 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter LOPDGDD).

The legal representative of Doña B.B.B. presented arguments indicating, in short,

thesis, the following:

<<That your client is not among the responsible subjects

included in article 70 of the LOPDGDD, not being, therefore, necessary to have

a DPD.

It is clear that the facts denounced are not related to the

treatment of data in any way and, therefore, the Law is not applicable in the pre-

feel case.

It is for all these reasons that, as a PRELIMINARY QUESTION, request the FILE immediately

of the present case

The examination of the complaint concludes in the following extremes:

a) Regarding the complainant:

The complainant is not any of the persons whose name and/or surname mentioned

ciona B.B.B. in the reported tweet. He has not provided his DNI with the complaint nor has he

accredited power of representation granted by the person named

bra. And therefore you have no legitimate interest in the claim.

As the claim is not made by an interested person, they cannot allege

violation of rights and freedoms regarding the protection of your personal data-

them.

They are mentioned in the video posted on my rep's personal twitter account.

filed at least 3 people, of which, none of them has filed a claim

mation against my client.

One of the people alluded to by Ms. B.B.B., responds in the tweet thread

saying to be called C.C.C. and therefore one of the named persons knows the

fact that she was mentioned by answering with her name and surname, without

has filed any claim against my client, answering him in a

public on October 23 in the form of a response to his tweet in which he expresses: "The

XXX together with Sindicat XXX since they were informed that the con-

deal have been threatening and harassing me continuously (letters, concentrations

tions, public communications with name and surname), etc ACCORDING TO THEM CURRENTLY

NEGOTIATION TIONS'

A PDF document is attached with the thread of the tweet, showing the response of the

user "C.C.C." on October 23.

b) Regarding personal data:

Mrs. B.B.B. on his twitter he mentions the data with names and surnames of several

people, in no case the simple mention of the name and surname of a person, in

a social network automatically constitutes an infringement of the Organic Law.

ca 3/2018, of December 5, Protection of Personal Data and guarantee of rights

digital dudes.

It is, therefore, that the coverage offered by the legislation on protection

Data transfer refers to any actions carried out for the purpose of processing

lien of your personal data. this is an essential presupposition that the information

mation is or will be undergoing treatment.

c) Regarding my client:

Mrs. B.B.B., who is a private person who makes in her personal account

nal of twitter, a series of demonstrations protected by their right to freedom of

expression recognized in article 20 of the Constitution, information that is carried out with

a legitimate interest such as that of publicly communicating the risk situation of

social exclusion of certain people, due to the rise in their rent

ler that could lead to eviction from your family home.

We understand that in this case the right to property must be differentiated

protection of data with the rights that assist the persons mentioned in relation to

tion to his right to privacy, honor and own image, without the complainant Mr.

can exercise said rights that correspond to the aforementioned persons.

I REQUEST THIS AGENCY, to have this written RESOLUTION as submitted

PUTTING in time and form, please admit it and after the appropriate legal procedures and

Based on the exposed allegations, please resolve the immediate FILE of the ex-

referenced pending, without admitting the aforementioned claim for processing, or if applicable,

agreeing not to have place to initiate the file.>>

THIRD: When analyzing the allegations, it was found that in other tweets of

people who make up the dome of PODEMOS had also commented on the matter

Object of the claim:

D.D.D.: ***TWEET.2 - ***DATE.1 at 12:32 pm; picks up the same news, say-

Telling the owner: “You XXX…”

E.E.E.: ***TWEET.3 - ***DATE.1 at 12:24 pm, writing. “you XXX…”

As you can see, these tweets are prior to the one published by Mrs. B.-

B.B., which was published at 4:32 p.m. on ***DATE.1

FOURTH: In all the published tweets it is spoken in the plural, “le XXX”, therefore

It seems that several people are asking for it.

An analysis of the electoral program of PODEMOS allows us to verify that among the

points established by the party are aspects to avoid an abusive rise-

It goes from the price of renting a house.

FIFTH: On January 21, 2020, the Director of the Spanish Agency

Data Protection admitted the claim for processing.

SIXTH: On February 12, 2020, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against PODEMOS

POLITICAL PARTY, in accordance with the provisions of articles 63 and 64 of the Law

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

Public Actions (hereinafter, LPACAP), for the alleged violation of Article 6 of the

RGPD, typified in Article 83.5 of the RGPD.

SEVENTH: Having notified the aforementioned start-up agreement, PODEMOS submitted a written

of allegations in which, in summary, it stated the following:

<<It is necessary to indicate as an initial matter, that the organization has not been

previously communicated complaint by Mr. A.A.A. and, therefore, it has not been completed

do the transfer referred to in article 65.4 of Organic Law 3/2018 of December 5,

Data Protection.

And consequently, when the initial resolution says that "The representative

of the claimed party presented allegations", it is understood that the claimed party who has

presented allegations has been Mrs. B.B.B.

Likewise, in the notification that is made at the present time, added

to the facts object of the claim, the tweets of Mr. D.D.D. and Mrs. E.E.E., who did not

were mentioned in the previous notification.

That is why, based on the allegations of a third party on its own behalf,

The Agency considers that the prior procedure for remitting the claim to the

Delegate for Data Protection of PODEMOS, not complying with the provisions of

article 65.4 of the LOPD.

Therefore, it has not been required, prior to the start of the disciplinary proceedings, the

Data Delegate, for the purposes of applying codes of conduct for the purposes

those provided for in articles 37 and 38.2 of this Organic Law.

As a result of the foregoing, and if the allegations made are not upheld,

mulan, it is requested that the agreement to initiate the sanctioning procedure be declared null and void.

nador, carrying out the transfer provided for in article 65.4 of LO 3/2018.

To the effect that the estoppel of deadlines does not occur, this part is

to make ARGUMENTS TO THE AGREEMENT TO START THE PUNISHMENT PROCEDURE-

NADOR.

FIRST.- SUPPRESSION OF TWEETS.- RIGHT OF SUPPRESSION.

In accordance with article 17 of the European Union Regulation,

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

protection of natural persons, with regard to the processing of personal data

them and the free circulation of these data and by which Directive 95/46/EC is repealed

(General Data Protection Regulation), in particular the right of deletion, the

organization through the Data Protection Delegate has verified the deletion

tion of the tweets referred to in the resolution to initiate the sanctioning procedure

swimmer

PODEMOS, respects and promotes the freedom of expression of all people.

nas, which includes the freedom of opinion and to communicate information or ideas without

that there may be interference, as is the case, in accordance with the provisions

in article 10 of the Convention for the protection of human rights and freedoms

fundamental freedoms, in accordance with the provisions of article 19.2 of the

International Covenant on Civil and Political Rights in which it is established that “All

person has the right to freedom of expression; This right includes freedom

seek, receive and disseminate information and ideas of all kinds, without regard to

borders, whether orally, in writing or in print or in the arts, or by any

another procedure of your choice.

And under the protection of our Constitution that in its article 20.1, recognizes and protects

get the right to:

a) To freely express and disseminate the thoughts, ideas and opinions

by word, writing or any other means of reproduction.

That is why the organization does not intervene in the legitimate demonstrations

that are carried out under the protection of the demonstrations made in the exercise of the right

of all people to freedom of expression while respecting data protection

of a personal nature, as is understood to be the current assumption, which we understand

activates a sanctioning procedure without any motivation as there is no violation

some.

SECOND.- OF THE RESPONSIBLE FOR TREATMENT AND TREATMENT

TOMATIZED FROM THE DATA OF THE SITES WHERE THE PUBLICATION OCCURRED-

TION OF THE DATA.

PODEMOS is not the data controller of the web pages where

the personal twitter accounts of third parties are hosted, nor has it re-

No type of processing of personal data has been carried out on any web page of yours.

individual ownership.

Therefore, this organization declares that as a legal entity we CAN

MOS:

He is not the author of the dissemination of any data on the Internet.

It has not given an automated treatment to any data related to Mrs. C.C.C.

It is not the controller of the personal twitter accounts of

third persons.

There has been no publication of personal data of Mrs. C.C.C.,

on the web pages or official sites of the organization.

No advertising of any personal data has been made.

And, consequently, in the present case, the Directive does not apply.

95/46 nor the alleged Jurisprudence, in particular the “Lindqvist” sentence, since it was

cha Mrs. Lindqvist and not an organization outside your website, or third parties

cited in the resolution now appealed, which included personal data that affected

value the privacy of others, as manifested recurrently in the agreement of

initiation of disciplinary proceedings.

Starting from the reasons previously alleged with respect to the legitimate

freedom of expression that does not violate the right to the protection of personal data

staff, the Agency denies that the aforementioned made demonstrations

in a private capacity, indicating on page 15 “not carried out in a private capacity”, indicating

that it is a “communication from several members of the political party”, affirmation

that we fight precisely because there is no proven causal relationship

that the argument rests on assumptions, and put in strict defensive terms,

without evidentiary support that reinforces such affirmation.

Consistent with the line shown, if it had been an action of the

political party, as referred to in the initial resolution, within the framework of the Guarantees of

Social Justice, of those included in its program, this organization

would have made the statements that it considered pertinent, on the web pages

officials of the organization, since we consider that there has been no violation

na in the personal data of Mrs. C.C.C.

It is therefore that the deductive logic carried out by the AEPD to attribute the response

responsibility to PODEMOS, uniting one of the points of the program of the organization

tion, with the statements made by three of its members individually,

the Agency affirming, without any proof, based on a mere assumption, that there is

an action by the organization, seems to us, at least, excessive.

THIRD.- OF THE IMPROPERNESS OF THE IMPOSITION OF THE SANCTION

OF WARNING.-

This organization has revealed that it has verified the non-existence

as of the date of the tweets mentioned in the complaint.

And therefore, prior to the transfer provided for in article 65.4 of the

LO3/2015, which has not yet occurred to PODEMOS, the activity that originated it no longer exists.

gina the initiation of this procedure for an alleged infringement, and that is why

which we understand is not the continuation of it.>>

EIGHTH: On June 19, 2020, allegations were received to the

motion for a PODEMOS resolution, in which it reiterates that no transfer was made

give the claim to the party, which makes the procedure null. Consider that eli-

Tweets were mined before starting the procedure. Podemos does not limit the freedom of ex-

pressure from no one, which appears in article 20.1 of the Spanish Constitution.

the. It adds that they are not responsible for the infringement attributed to them.

PROVEN FACTS

FIRST: On October 23, 2019, a claim was received at the Es-

Data Protection panola directed against Doña B.B.B.; because in the profile

claimed, ***PERFIL.1, has publicly disclosed personal data of third parties

zeros. Specifically, in the tweet published on ***DATE.1, at 4:32 p.m.

ras:***TWEET.1.

The tweet indicates the first name of the marriage that has leased a

housing and the name and first surname of the owner of the housing. He goes to the

owner saying: “Le XXX…”

In other tweets from people who also hold prominent positions in PO-

DEMOS has commented on the subject of the claim:

D.D.D.: ***TWEET.2 - ***DATE.1 at 12:32 pm; picks up the same news, say-

Telling the owner: “You XXX…”

E.E.E.: ***TWEET.3 - ***DATE.1 at 12:24 pm, writing. “you XXX...”

SECOND: The tweets are no longer accessible.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), recognizes each

Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), the Director of the Agency Spanish Data Protection is competent to initiate and resolve this process.

Article 63.2 of the LOPDGDD determines that: «The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In the first place, we will indicate that the sanctioning procedure always begins ex officio, according to article 63.1 of Law 39/2015, of October 1, of the Procedure Common Administrative Procedure of the Public Administrations, either by their own initiative, va or as a consequence of a superior order, at the reasoned request of other organs or by complaint (article 58 of Law 39/2015).

The art. 62.1 of Law 39/2015 defines "complaint" as "the act by which any Any person, in compliance or not with a legal obligation, informs an administrative body the existence of a certain fact that could justify the ex officio initiation of an administrative procedure.

No interest is required to file a complaint, which can to be presented by whoever considers himself "interested", as well as by any other person. without the presentation of a complaint conferring "by itself" the condition of interest. resado in the procedure (art. 62.5 law 39/2015).

Nor is it necessary to act "on behalf" of the person whose personal data are revealed, so no power of representation of any of this is necessary, there is

who does not act on his behalf, but as a mere whistleblower.

In this case, a person has informed the Spanish Agency

of Data Protection, as the competent body for the processing of procedures

sanctions that violate data protection regulations, some facts

that, in their opinion, do not comply with said regulations.

III

Secondly, regarding the mention of names and surnames, if we go

to the definition of “treatment” contained in article 4.2) RGPD: “treatment

to»: any operation or set of operations carried out on personal data

or sets of personal data, whether by automated procedures or not,

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, su-

pressure or destruction.

There is treatment from the moment it is communicated by transmission, or

spreads, one (several) personal data(s).

When publishing a tweet there is a diffusion of “personal data” that according to the article

ass 4.1) RGPD is defined as:

“personal data”: any information about an identified natural person or

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

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

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

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

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

There seems to be no doubt that the name and surname of a certain

person is in itself personal data.

In addition, in the tweet we only see that personal data, but it is done

a connection of a personal data such as the name and surname with another personal data

final, of an economic nature, such as that person being the owner of a certain

apartment, and that it is also leased, and that it is in a situation of conflict with the

tenants (and with a particular tenant association).

Likewise, it also reveals other personal data, such as the income that

have been paying for that house -economic data- and the increase in rent that,

supposedly, request.

Another aspect that must be highlighted is that the dissemination or communication of data

over the internet, open to anyone, is data processing

that can be considered as "automated", being therefore applicable

the GDPR).

The Judgment of the CJEU of November 6, 2003, Lindqvist, paragraphs 19 and

24-27, deals with a case that is essentially similar to the present one. Said sentence with

has the following pronouncements of the CJEU

19. By its first question, the referring court asks whether

the conduct that consists of referring, on a web page, to various

persons and to identify them by name or by other means, such as their number

telephone number or information regarding their working conditions and their hobbies

constitutes a "whole or partially automated processing of personal data"

les' within the meaning of Article 3(1) of Directive 95/46.

(…)

24. The concept of "personal data" used in Article 3(1) of

Directive 95/46 covers, according to the definition in Article

2, letter a), of said Directive «any information about an identifiable natural person

each or identifiable". This concept undoubtedly includes the name of a person

next to your telephone number or other information related to your conditions of

work or hobbies.

25. As for the concept of "processing" of such data used in the article

3, paragraph 1, of Directive 95/46, this includes, according to the definition

tion of Article 2, letter b), of said Directive, "any operation or set

of operations, carried out or not through automated procedures, and applying

each to personal data". This last provision lists several examples of

such operations, which include communication by transmission, broadcasting,

sion or any other way that facilitates access to the data. It follows from this

that the conduct that consists in referring, on a web page, to data

treatment of this nature should be considered.

26. It remains to be determined whether such treatment is "partially or fully auto-

nuanced". In this regard, it should be noted that disseminating information in a

website implies, in accordance with the technical and computer procedures

that are currently applied, publish said page on a server, as well as perform

perform the necessary operations to make it accessible to people who

are connected to the Internet. These operations are carried out, at least in part,

in an automated way.

27. Therefore, the answer to the first question must be that the conduct that

consists in making reference, on a web page, to different people and in identifying

address them by name or by other means, such as your phone number or information

information regarding their working conditions and their hobbies, constitutes a "treatment

fully or partially automated storage of personal data" within the meaning of

Article 3, paragraph 1, of Directive 95/46.

IV

As for what is the canon of interpretation existing in Spanish law

regarding the weighting between the exercise of freedom of expression or information

(art. 22 EC) and the processing of personal data art. 18.4 CE), it is worth citing the sentence

of the constitutional court STC 58/2018, of June 14, on the right to oblivion di-

gital regarding certain people for news that appeared in the newspaper EL PAIS:

The public relevance of the information is determined both by the subject matter and

object of the same, as by reason of the public or private condition of the person.

sound to which it concerns. As we have said repeatedly, the authorities and

public officials, as well as public figures or those dedicated to activities

companies that carry public notoriety «voluntarily accept the risk that

their subjective rights of personality are affected by criticism, opinion-

adverse disclosures or disclosures and, therefore, the right to information reaches, in

relationship with them, their maximum level of legitimizing efficacy, insofar as their

life and moral conduct participate in the general interest with a greater intensity

than that of those private persons who, without a vocation for public projection,

are circumstantially involved in matters of public importance,

which must, therefore, recognize a higher level of privacy.

which prevents granting general importance to facts or behaviors that the

would have to be referred to public figures" (for all, STC 172/1990, of

November 12, FJ 2). In this sense, it has been said that, in the case of people

private parties, even when the news for the matter to which it refers concerns

to the public interest, not all of its content is protected by freedom of information.

had, but it can be considered disproportionate the transmission of those

facts that, within the news, affect the honor or privacy of the person

concerned and that are revealed as "manifestly unnecessary and irrelevant

for the public interest of information» (SSTC 105/1990, of June 6, FJ 8, and

121/2002, of May 20, FJ 5).

In the present case, an analysis of the weighting between the right to freedom

freedom of expression and the right to protection of a person's personal data,

but from the facts that result from the case we are before a fact that in itself does not

would be newsworthy (there are evictions every day in many unfortunate cities-

mind, and this is not a special case).

A processing of personal data of a private person has been carried out, and

that therefore, according to the cited constitutional doctrine, it would not be protected

given for the freedom of information, in this case of expression, all the content of a

news (it is reiterated, in any case, that we do not consider that we are facing a

newsworthy), but it would be preponderant the defense of the rights and interests

legitimate to the protection of personal data of said private person, because

it should be considered that the disclosure not only of the name and surname of said person

vada, but also in conjunction with the other personal data mentioned,

such as the fact of owning a flat, that said flat is leased, what

is the rental income paid by the tenants, as well as the conflict situation

or the amount that was intended at the time to raise the rent, are susceptible to

produce damage that must prevail over the freedom of expression of the defendant.

v

PODEMOS POLITICAL PARTY in its brief of allegations to the initial agreement

cio, as well as in the resolution proposal, presents allegations, which are refuted

continuation.

It is necessary to determine who is responsible for the offense committed. In

In this sense, it must be taken into consideration that the personal data of the owner

housing, whose dissemination is subject to sanction, have been disseminated and commented on in

the accounts of three people who belong to the PODEMOS political party and occupy

relevant positions, Doña B.B.B., Don D.D.D. and Doña E.E.E.. The three tweets were published

They took place on the same day, with a very few hours difference, and, in all of them, the three

members of Podemos, address those who listen or read these tweets in the plural:

"we ask"

In the PODEMOS program, within the framework of the Guarantees of Social Justice,

included as measure 203: "Intervene in the rental market to prevent increases

abusive by controlling prices and guaranteeing a stable and secure rental for

tenants and small owners". Therefore, it is understood that the responsible

ble of the treatment of the data of the owner of the house in the framework of a de-

sahucio and a rise in rent, is the political party to which the

people who have spread and echoed the news through their accounts

of twitter, and in whose messages they do not defend the issue of the rent increase

to personally.

This is a communication from various members of the political party PODE-

MOS, (not carried out in a private capacity) requesting the support of citizens to im-

request, at your discretion, an increase that in your opinion is abusive in the price of the lease

of a dwelling, as included in his electoral program. This same criteria has

been maintained by the Spanish Data Protection Agency in other procedures.

sanctioning acts (for example AP/00012/2014 and PS/00700/2015).

That damage has occurred results from the known circumstances of the

case. In addition, by revealing the name and surname of a certain person, it is

that another person with the exact same name has suffered damages in his or her

business, since she owns a rural house, and as a result of the revelation of the name and

last name of the person with the same name as her who is involved in the

of the lease to which the data controller wanted to refer

of the published tweets, has suffered threats, cancellations of reservations

etc. There is no analysis by the controller of the possibility of

that said interests and legitimate rights prevail over the legitimate interest that

may claim for the processing of personal data.

Lastly, we must not fail to highlight the very character of those who carry out

zan the treatment of the data. Contrary to what it may seem, their freedom of expression

pressure is limited, like everyone else's, by the constitutional rights of third parties

people who may be affected in their fundamental rights, including the

protection of your personal data. Well, it has not existed, as has already been mentioned.

mentioned in the immediately preceding section, an analysis of the data controller

on the influence of said treatment on the fundamental right to the protection of

personal data of the person whose name has been made public. But what fits

add here is that said analysis, which has not been carried out, must incorporate the ele-

ment of what is the position occupied by those responsible for the treatment at the time of

make your statements. That is, given the condition of being members of a party with

great following of both voters and supporters, they should have acted

do with a diligence not only normal, but superior, at the time of carrying out the treatment

personal data and weighing of interests. That is, the controller

thought should have taken into account that his opinion is not like that of a person

anyone, but being a political party with a huge following, its expressions

In any case, the expressions will have a much greater influence than the expressions themselves.

pressure or treatment of personal data carried out by a private person. Gave-

such analysis has not been carried out by the data controller, and should certainly

be taken into account in the corresponding sanctioning procedure at the time of

Terminate the responsibility of the data controller.

In accordance with the above, it is considered that PODEMOS POLITICAL PARTY

TICO has processed the personal data of the owner of the home without legitimation.

SAW

The political party alleges that the claim was not forwarded to it as established by

article 65.4 of the LOPDGDD.

The indicated article and section establishes the following:

4. Before deciding on the acceptance of the claim for processing, the Agency
Spanish Data Protection Authority may send it to the Data Protection Delegate.
data that would have, where appropriate, designated the person in charge or in charge of the treatment
or to the supervisory body established for the application of the codes of con-
conduct for the purposes set forth in articles 37 and 38.2 of this organic law.
The Spanish Agency for Data Protection may also send the claim
information to the person responsible or in charge of the treatment when it had not been designated
a data protection delegate or adhered to resolution mechanisms
conflicts, in which case the person in charge or person in charge must give
put to the claim within a month.

Therefore, this transfer prior to admission for processing does not imply an obligation.
of a claim, a circumstance that occurs with some frequency.

On the other hand, they indicate that the tweets have already been suppressed, so it should be
sneak the procedure. The fact that the processing of personal data was suppressed
without any legitimation is a circumstance that is taken into consideration in
the moment of establishing the sanction that must be imposed for the commission of the infraction
tion.

7th

Finally, and in relation to the freedom of expression of the members of the
alleged political party, the Judgment of the National High Court, of May 9, 2019,
resource 491/2017, affects the collision of fundamental rights and its necessary
weighting, indicating in its FOURTH Legal Basis the following:

<<As we have declared in cases similar to the present one (sts of May 15
of 2017 (R. 30/16); St. of June 19, 2017, (R.1842/15) and st. from July 18

2017, (R. 114/16), for the correct approach to the issues raised in the

present appeal, it should be underlined that the Constitutional Court, in the judgment

39/2016, of March 3, recalling what was already reasoned in judgment 292/2000,

declares that: "[...] the right to data protection is not unlimited, and although the

Constitution does not expressly impose specific limits, nor does it refer to the powers

public for its determination as it has done with other fundamental rights, not

there is no doubt that they are to be found in the other fundamental rights and

constitutionally protected legal assets, as required by the principle of

unity of the Constitution [...]". Based on the foregoing, and in view of the approach

of the parties, the issue raised in this proceeding is circumscribed to the

weighing trial of rights and interests in confrontation. To this end, it is considered

necessary, in the first place, to define the object and content of the rights

at stake, just as this Chamber has done in previous

occasions in which the same legal controversy has arisen.

Following the STC just cited, it must be stated that the fundamental right

to the protection of data enshrined in article 18.4 of the Spanish Constitution, to

difference from the right to privacy of art. 18.1 CE, with whom he shares the goal

to offer effective constitutional protection of private personal and family life,

excluding the knowledge of others and the interference of third parties against your

will, seeks to guarantee that person a power of control over their data

personal, on its use and destination, with the purpose of preventing its illicit and harmful traffic

for the dignity and rights of the affected. The right to data protection has, therefore, a broader object than that of the right to privacy, since the right fundamental to data protection extends its guarantee not only to privacy in its dimension constitutionally protected by art. 18.1 CE, but to the sphere of personal assets that belong to the sphere of private life, inseparably linked to respect for personal dignity, such as the right to honour, and to the full exercise of the rights of the person. The fundamental right to Data protection extends the constitutional guarantee to those data that are relevant or have an impact on the exercise of any rights of the person, whether or not they are constitutional rights and whether or not they are related to honor, ideology, personal and family intimacy to any other constitutionally protected. In this way, the object of the fundamental right to data protection It is not reduced only to the intimate data of the person, but to any type of data personal, intimate or not, whose knowledge or use by third parties may affect their rights, whether fundamental or not -such as those that identify or allow the identification of the person, being able to serve for the preparation of their ideological profile, racial, sexual, economic or of any other nature, or that serve any other utility that in certain circumstances constitutes a threat to the individual because its object is not only individual privacy, already protected by art. 18.1 EC, but personal data. Consequently, it also reaches those public personal data that, by virtue of being public, being accessible to the knowledge of anyone, do not escape the power of disposition of the affected party because This is guaranteed by your right to data protection. As regards the right to freedom of expression, in light of the doctrine of the Constitutional Court (SSTC 23/2010, of April 27, and 9/2007, of January 15) enshrined in article 20 of the Constitution, includes, along with the mere expression of thoughts, beliefs,

ideas, opinions and value judgments, criticism of the conduct of another, even when the

itself is bland and can annoy, worry or upset the person it addresses, since

this is required by pluralism, tolerance and a spirit of openness, without which

there is a democratic society.

Freedom of expression is broader than freedom of information as it does not

to operate in the exercise of the former the internal limit of veracity that is applicable to it,

what is justified in that it is intended to present ideas, opinions or value judgments

subjective that do not lend themselves to a demonstration of their accuracy, nor by their nature

abstract are susceptible to proof, and not to establish facts or affirm objective data.

However, this difference does not prevent affirming that both constitute rights.

rights held by all natural persons and that can be exercised at

through word, writing or any other means of reproduction, without prejudice to

that when such freedoms are exercised by information professionals through

of an institutionalized vehicle for the formation of public opinion, its degree of

protection reaches its maximum level (STC 165/1987, of October 27). Definitely,

the recognition of freedom of expression guarantees the development of a

free public communication that allows the free circulation of ideas and value judgments

inherent to the principle of democratic legitimacy. In this sense, it deserves special

constitutional protection the dissemination of ideas that collaborate in the formation of the

public opinion and make it easier for citizens to freely form their opinions and

participate responsibly in public affairs. However, just like

happens with the other fundamental rights, the exercise of the right to freedom expression is subject to constitutional limits that the Constitutional Court has progressively outlined. Thus, it does not cover the presence of phrases and expressions libelous, outrageous and offensive unrelated to the ideas or opinions expressed expose and, therefore, unnecessary for this purpose, nor does it protect the disclosure of facts that are but simple rumours, inventions or insinuations devoid of foundation, nor does it give shelter to snares or insults, since it does not recognize a pretended right to insult. Along with this, the expansive trend of freedom of expression also finds its limit in respect for the normative content guaranteed by other fundamental rights, whose affectation is not necessary for the constitutional realization of the right. Delimitation that can only be done through the proper weighting of the conflicting constitutional values, among which highlights the guarantee of the existence of public opinion, indissolubly coupled with political pluralism, it should be remembered that, as recognized by the paragraph 4 of art. 20 CE, all the freedoms recognized in the precept have their limit on the right to honor, privacy, self-image and protection of the youth and childhood, which fulfill a "limiting function" in relation to these freedoms. Therefore, the protection of these other rights is weakened constitutional rights recognized by article 20.4 CE against the freedoms of expression and information, when exercised in connection with matters that are of interest general, by the matters to which they refer and by the people who intervene in them and contribute, consequently, to the formation of public opinion, as occurs when they affect public persons, who exercise public functions or are involved in matters of public relevance, thus forced to bear a certain risk that their subjective rights of personality will be affected by opinions or information of general interest (SSTC 107/1988, of June 8,

20/2002, of January 28, 160/2003, of September 15, 151/2004, of September 20

September, and 9/2007, January 15).>>

In the case analyzed, it is being judged whether it is necessary to include the data

of the landlord in the tweets published by three members of the party

claimed politician. As indicated, there is a collision between the right of

information/freedom of expression, and the right to protection of personal data

of the landlord of the dwelling, who also has the same name as another person

who has been harmed with the information. By weighing the interests of the

lessor, we must determine that your right to the protection of your rights prevails.

personal information. It was not necessary to indicate your name and surnames to report the

situation of the family that could not pay the rent and their circumstances.

viii

The known facts constitute an infraction, attributable to PODE-

MOS POLITICAL PARTY, for violation of article 6 of the RGPD, which states:

Article 6.1 of the RGPD establishes the assumptions that allow to consider legal

to the processing of personal data:

"1. The treatment will only be lawful if at least one of the following is met

conditions:

a) the interested party gave his consent for the treatment of his personal data-

them for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the

resado is part or for the application at its request of pre-contractual measures;

c) the treatment is necessary for the fulfillment of an applicable legal obligation.

cable to the data controller;

d) the treatment is necessary to protect the vital interests of the interested party or of

another natural person;

e) the treatment is necessary for the fulfillment of a mission carried out in

public interest or in the exercise of public powers vested in the person responsible for the

treatment;

f) the treatment is necessary for the satisfaction of legitimate interests per-

guided by the person in charge of the treatment or by a third party, provided that on said

interests do not override the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data, in particular when the

teresa be a child.

The infraction attributed to PODEMOS is typified in article

83.5 a) of the RGPD, which considers that the infringement of “the basic principles for the

treatment, including the conditions for consent under articles 5,

6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned article 83 of the

aforementioned Regulation, “with administrative fines of €20,000,000 maximum or,

being from a company, of an amount equivalent to a maximum of 4% of the volume

overall annual total turnover of the previous financial year, opting for the

greater amount”.

The LOPDGDD in its article 71, Violations, states that: "They constitute violations

nes the acts and behaviors referred to in sections 4, 5 and 6 of article 83

of Regulation (EU) 2016/679, as well as those that are contrary to this law

organic”.

And in its article 72, it considers for prescription purposes, which are: "Infringements

considered very serious:

1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679

are considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

following:

(…)

b) The processing of personal data without the concurrence of any of the conditions

legality of the treatment established in article 6 of the Regulation (EU)

2016/679.

(…)”

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation

with what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed constituted

would place a disproportionate burden on a natural person, rather than a measurable sanction.

Due to a fine, a warning may be imposed. However, special attention must be paid

attention to the nature, seriousness and duration of the infraction, to its intentional nature

to the measures taken to mitigate the damages suffered, to the degree of res-

responsibility or any relevant prior violation, to the manner in which the authority

of control has been aware of the infraction, to the fulfillment of or-

sentenced against the person responsible or in charge, adherence to codes of conduct and

any other aggravating or mitigating circumstance."

In the present case, it has been taken into consideration at the time of determining

undermine the sanction that it is an infraction without a continuous character; nature,

severity and duration of the infraction and the removal of the tweets subject to this procedure.

lie in a very short period of time.

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 PODEMOS POLITICAL PARTY, with NIF G86976941, by

an infringement of Article 6 of the RGPD, typified in Article 83.5 of the RGPD, a

warning sanction

SECOND: NOTIFY this resolution to PODEMOS POLITICAL PARTY.

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

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

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

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

CAP, 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

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

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

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 LPA-

CAP, the firm resolution may be provisionally suspended 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-

web/], or through any of the other registers provided for in art. 16.4 of the city

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

certifying the effective filing of the contentious-administrative appeal. Yes

the Agency was not aware of the filing of the contentious-administrative appeal

nistrative within two months from the day following the notification of the pre-

This resolution would end the precautionary suspension.

Sea Spain Marti

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