

□ File No.: PS/00205/2021

## RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

### VOLUNTEER

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

### BACKGROUND

FIRST: On June 17, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against A.A.A. (onwards,  
the claimed party), through the Agreement that is transcribed:

<<

Procedure No.: PS/00205/2021

### AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in  
based on the following

### FACTS

FIRST: On July 9, 2020, the Director of the Spanish Agency for

Data Protection agrees to initiate investigative actions in relation to the  
facts described below:

On July 8, 2020, this Agency became aware of the dissemination, through  
of social networks, of a video showing images of an assault by  
part of a man to a woman, which could constitute a crime of domestic violence.  
gender. The video also shows images of a young male minor, who  
intervenes in the scene trying to avoid the aggression that was taking place.

This video is accessible, at least, through the following URLs:

\*\*\*URL.1

\*\*\*URL.3

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The second of them is a re-tweet of the first. In the first, the accompanying message

ña the dissemination of the video is as follows:

“Yesterday in Éibar, sexist violence was shown in the middle of the street. The aggressor finished her off

yelling in front of his son. He has been arrested. Minimum 80,000 women a year in our

another country live in this situation. To deny violence is to help the aggressor with each blow.”

The video reviewed has also been disseminated by the media, although

This disclosure has been made prior to pixelation that prevents the identification of the

physical sounds that appear in it.

SECOND: In view of the facts of which this Agency has become aware,

The Subdirector General for Data Inspection proceeded to carry out actions

preliminary investigations to clarify the facts in question, in virtue of

tude of the powers of investigation granted to the control authorities in the article

57.1 of Regulation (EU) 2016/679 (General Data Protection Regulation,

hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I,

Second section, of Organic Law 3/2018, of December 5, on the Protection of

Personal data and guarantee of digital rights (hereinafter LOPDGDD).

The following extremes are noted:

- On July 23, 2020, the events were transferred to the Attorney General's Office

of the State for its knowledge and opportune effects.

- It is verified that at the beginning of these investigative actions the tweets continue to

showing the videos. In them it is verified that in certain frames

could identify the minor and his mother.

- On July 27, 2020, Ms. A.A.A. is requested, through the City Council,

of Palma de Mallorca, to report on the origin of the published video and the reason

for which the faces of the minor and the victim had not been pixelated. With date of

On July 29, 2020, a reply is received to the request presented by its representative.

indicating that the origin of the video is a tweet from Don B.B.B., at the address:

\*\*\*URL.2.

It adds that no manipulation of the video images was previously made

already published since he understood he was limited to sharing an image already published with

anteriority. It ends by indicating that, after reviewing the images, they are not considered to be

have the appropriate quality and perspective to be able to identify the participants of

better way than in the case of pixelated partial faces appearing in it.

supper

- Examining the profile of the owner of the origin of the video on the social network TWITTER, it was observed

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Note that it works as XXXXXXXX of XXXXXXXX in \*\*\*LOCATION.1. Reali-

ced request for identification of this owner to that Provincial Council, a reply is received

to the request providing the data of the same.

- On January 27, 2021, a precautionary measure is issued to withdraw the twee-

ts outlined below, sent by international certified mail to TWI-

TTER INTERNATIONAL COMPANY (hereinafter TWITTER, headquartered in Ireland). I don't know

is certain that the precautionary measure has been delivered at destination.

- \*\*\*URL.2

- \*\*\*URL.1

- \*\*\*URL.3

At the same time, the same day that the aforementioned precautionary measure was sent in the previous paragraph, the withdrawal was requested through the established web form for this Agency by those responsible for the TWITTER platform.

- Dated March 1, 2021, it is verified that the tweets of Doña A.A.A. Y

by Don B.B.B. now appear as sensitive content disabling their display

automatically, being necessary to manually select its visualization.

- Dated March 23, 2021, a letter sent by TWITTER is received manifests-

While the Tweets seem to have shared the video to raise awareness about

violence perpetrated against women. As such, Twitter believes that Tweets are fueled

align with Twitter's mission to serve the public conversation, share informa-

tion instantly and without barriers. This includes sharing information that may be of interest to you.

public interest. When people share information of public interest on Twitter

ter, the general public benefits, as it offers them access to information that

can be difficult to obtain or learn. It also allows for public discussion around

to topics and issues of public interest such as violence against women. After

Upon review, Twitter determined that the content does not violate Twitter's Terms of Service.

Twitter, the Twitter Privacy Policy, or the Twitter Rules, and will not be removed from

the platform.

FOUNDATIONS OF LAW

Yo

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

General Data Protection Regulation, hereinafter RGPD), recognizes each Authori-

Control Authority, and as established in articles 47, 48.1, 64.2 and 68.1 of the Law

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

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digital rights (hereinafter, LOPDGDD), the Director of the Spanish Agency

Data Protection is competent to initiate and resolve this procedure.

Article 63.2 of the LOPDGDD determines that: «The procedures processed by the

Spanish Agency for Data Protection will be governed by the provisions of the

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

The physical image of a person, in accordance with article 4.1 of the RGPD, is a

personnel and their protection, therefore, is the subject of said Regulation. In article 4.2

of the RGPD defines the concept of "treatment" of personal data.

It is, therefore, pertinent to analyze whether the processing of personal data (image of the

natural persons) carried out through the dissemination of the video object of this

procedure is in accordance with the provisions of the RGPD.

III

In the first place and referring to the publication by Doña A.A.A. of the indicated video

in the background, article 6.1 of the RGPD, establishes the assumptions that allow

consider the processing of personal data lawful:

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

conditions:

a) the interested party gave their consent for the processing of their data

personal for one or more specific purposes;

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

interested party is a party or for the application at the request of the latter of measures

pre-contractual;

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c) the treatment is necessary for the fulfillment of a legal obligation

applicable 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

pursued by the controller or by a third party, provided that on

such interests do not override the interests or rights and freedoms

fundamental data of the interested party that require the protection of personal data, in

particularly when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to

treatment carried out by public authorities in the exercise of their functions.

On this question of the legality of the treatment, it also affects the

Recital 40 of the aforementioned RGPD, when it states that "For the processing is lawful, personal data must be processed with the consent of the interested party or on any other legitimate basis established in accordance with Law, either either in this Regulation or by virtue of other law of the Union or of the Member States covered by this Regulation, including the need to comply with the legal obligation applicable to the data controller or the need to to execute a contract to which the interested party is a party or in order to take measures at the request of the interested party prior to the conclusion of a contract.»

In relation to the above, it is considered that there is evidence that the treatment of data of the people that appears in the images object of this procedure, a minor and his mother, has been carried out without legitimizing cause of those collected in the article 6 of the RGPD.

The GDPR applies to personal data, which is defined as "personal data":  
any information about an identified or identifiable natural person ("the data subject");  
an identifiable natural person shall be considered any person whose identity can be be determined, directly or indirectly, in particular by means of an identifier, such as for example a name, an identification number, location data, a online identifier or one or more elements of physical identity, physiological, genetic, psychic, economic, cultural or social of said person.

Both the minor and his mother, whose data has been processed by Doña A.A.A., are identifiable.  
since your identity can be determined, directly or indirectly.

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The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among them they have the power to issue a warning -article 58.2 b)-, the power to impose an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the controller or processor that the treatment operations comply with the provisions of the RGPD, when appropriate, in a certain way and within a specified period -article 58. 2 d)-.

In accordance with the evidence available at the present time of agreement to initiate the sanctioning procedure, and without prejudice to what results from the instruction, it is considered that the exposed facts do not comply with what is established in the article 6.1. of the RGPD, for which it could suppose the commission of an infringement typified in article 83.5 of the RGPD, which provides the following:

““Infringements of the following provisions shall be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;”

For the purposes of the limitation period for infractions, the infraction indicated in the previous paragraph is considered very serious and prescribes after three years, in accordance with Article 72.1 of the LOPDGDD, which establishes that:

“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 of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.”

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 fines administrative actions under this article for violations of this

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Regulation indicated in 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 contemplated in the Article 58, paragraph 2, letters a) to h) and j).

Notwithstanding the foregoing, the aforementioned Regulation provides in its art. 58.2 b) —without prejudice of what is established in article 83 RGPD - the possibility of directing a warning, in relation to what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however

Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

In the present case, without prejudice to what results from the investigation, they have taken into account In particular, consider the following elements.

☐ That it is the dissemination of data on the image of a woman who is being beaten and her youngest son who comes to help her.

☐ That it is an individual whose main activity is not linked to the processing of personal data

☐ That there is no recidivism, because there is no record of the commission of any offense of the same nature.

For all these reasons, it is considered that the penalty that should be applied is €10,000. (Ten thousand euros).

If the infraction is confirmed, it could be agreed to impose on the person responsible the adoption of appropriate measures to adjust their actions to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to the which each control authority may "order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a specified period[...]”.

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In such a case, in the resolution adopted, this Agency may require the responsible so that within the period determined:

☐ Remove the video posted at \*\*\*URL.1, or pixelate the images to prevent Identification of the minor and his mother.

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

Therefore, according to the above,

By the Director of the Spanish Agency for Data Protection, IT IS AGREED-GIVES:

FIRST: START A PUNISHMENT PROCEDURE against Ms. A.A.A., with NIF \*\*\*NIF.1, for the alleged infringement of article 6.1, typified in article 83.5 of the same legal text

SECOND: APPOINT C.C.C. and, as secretary, to D.D.D., indicating that any of them may be challenged, where appropriate, in accordance with the provisions ed in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the documents Documents obtained and generated by the Subdirector General for Data Inspection during the investigation phase, as well as the report of previous actions of the pection.

FOURTH; THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1-tubre, of the Common Administrative Procedure of the Public Administrations, the

sanction that could correspond would be €10,000, without prejudice to what results from

The instruction.

FIFTH: NOTIFY this agreement to Ms. A.A.A., granting her a term of

hearing of ten business days to formulate the allegations and present the evidence

bas that it considers convenient. In your statement of allegations you must provide your NIF and

the procedure number that appears in the heading of this document.

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If within the stipulated period it does not make allegations to this initial agreement, the same

may be considered a resolution proposal, as established in article

64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the

sanction to be imposed was a fine, it may recognize its responsibility within the

term granted for the formulation of allegations to this initial agreement; it

which will entail a reduction of 20% of the sanction to be imposed in

the present procedure. With the application of this reduction, the sanction would be

set at €8,000 (eight thousand euros), resolving the procedure with the

imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which

will mean a reduction of 20% of its amount. With the application of this reduction,

the sanction would be established at €8,000 (eight thousand euros), and its payment will imply the

termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at €6,000 (six thousand euros).

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above, you must make it effective by depositing it in account no.

ES00 0000 0000 0000 0000 0000 opened on behalf of the Spanish Agency for Data Protection in the banking entity CAIXABANK, S.A., indicating in the C/ Jorge Juan, 6

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concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which it avails itself.

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of

page of the start-up agreement or, where appropriate, of the draft start-up agreement. elapsed  
that term will produce its expiration and, consequently, the filing of actions; of  
in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP,

There is no administrative appeal against this act.

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Director of the Spanish Data Protection Agency

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SECOND: On June 21, 2021, the claimed party has proceeded to pay  
the sanction in the amount of 6,000 euros making use of the two reductions  
provided for in the Start Agreement transcribed above, which implies the  
acknowledgment of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to  
the opening of the procedure, entails the waiver of any action or resource in via  
administrative action against the sanction and acknowledgment of responsibility in relation to  
the facts referred to in the Initiation Agreement.

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FOUNDATIONS OF LAW

FIRST: By virtue of the powers that article 58.2 of the RGPD recognizes to each  
control authority, and as established in art. 47 of the Organic Law 3/2018, of  
December 5, Protection of Personal Data and guarantee of rights

(hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; violations of article 48 of Law 9/2014, of 9 May, General de Telecomunicaciones (hereinafter LGT), in accordance with the provided in article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the information society and electronic commerce (hereinafter LSSI), according to Article 43.1 of said Law provides.

SECOND: Article 85 of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (hereinafter, LPACAP), under the heading "Termination in sanctioning procedures" provides the

Next:

- "1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.
  2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.
  3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least, 20% of the amount of the proposed sanction, these being cumulative with each other.
- The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased

regulations."

In accordance with the above, the Director of the Spanish Agency for the Protection of

Data

RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00205/2021, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to A.A.A.

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.

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Against this resolution, which puts an end to the administrative procedure as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative before the Contentious-administrative Chamber of the

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

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

Contentious-Administrative Jurisdiction, within a period of two months from the

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

aforementioned Law.

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