 File No.: EXP202212888

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 April 11, 2023, the Director of the Spanish Agency for

Data Protection agreed to start a sanctioning procedure against COMPANY

VASCONGADA DE PUBLICATIONS, S.A. (hereinafter, the claimed party),

through the Agreement that is transcribed:

<<

Procedure No.: EXP202212888 (PS/0662/2022)

AGREEMENT TO START THE SANCTION PROCEDURE

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

based on the following:

FACTS

FIRST: On 04/21/22, the GOVERNMENT DELEGATION AGAINST THE

GENDER VIOLENCE (hereinafter, the claimant) filed a claim

before the Spanish Data Protection Agency (hereinafter, AEPD). The

The claim is directed, among others, against the entity, SOCIEDAD VASCONGADA DE

PUBLICACIONES, S.A., with CIF.: A20004073, (hereinafter, the claimed party). The

The reasons on which the claim is based are the following:

“The complaining party reported the publication in different media

of a news item illustrated with a video in which images appear (in the seconds

21 to 24 of the video) of a computer screen in which a spreadsheet is displayed.

Excel with personal data of 56 women registered in the VioGén system as victims of gender violence and different classifications based on their concrete circumstances. The complaining party provided links to the news published on the websites of the requested media, among which was the following link:

-

***URL.1.

SECOND: On 04/22/22, in accordance with article 65 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of the digital rights (hereinafter, LOPDGDD), the claim was admitted for processing submitted by the complaining party.

THIRD: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of control in article 58.1 of Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter GDPR), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of the LOPDGDD, being aware of the following extremes:

During the investigation proceedings, it was found that the claimed party published the video in which the personal data of women registered in the system were displayed VioGén in the following link:

-

***URL.1

On 04/22/22, a precautionary measure for the urgent withdrawal of content was addressed to the claimed party, where the urgent withdrawal of the video was required from both the web address indicated above as any other address related to the entity, as well as the communication to this Agency of compliance with this measure.

On 04/28/22, a response was received from the BASQUE SOCIETY OF PUBLICACIONES S.A in which it provides the following information:

1. That the aforementioned video had been provided to them by the ATLAS Agency in the framework of an agreement for the supply of news content.

2. They affirm that the publication of the Atlas Agency news on the page The El Diario Vasco website is carried out automatically, and that the supply of news is produced through an automated dump without El Diario Vasco can decide which news and materials are published and which are not, and without that may alter its content.

3. They affirm that the video is immediately withdrawn on the morning of the April 25, 222, providing a screenshot that proves it.

4. They affirm that they have requested deindexation from Google and provide a capture that Evidence of the request dated April 25, 2022.

On 10/03/22, a request for information was made to MEDIASET ESPAÑA COMUNICACIÓN S.A (hereinafter, MEDIASET), since the Atlas Agency, which requested, among other things:

- The company name of all the clients to whom the video was transferred, with an indication determination of whether or not the publication on their web portals was done automatically. AC.

- The content agreements or contracts under which the video was transferred.

On 10/13/22, a response was received from MESIASET to the request for information.

above, indicating in it, among other things, the following:

- He affirms that he made the video available to his clients on 03/31/22.

- He affirms that the publication in digital media is not automatic: MEDIA-

SET makes the content available to customers and they decide whether to release it to them.

load or not

- He affirms that MEDIASET has CONMUNICA MEDIATRADER as a client

S.L, which acts as an intermediary for GESTIÓN DE MEDIOS Y SERVICIOS,

S.L.U (VOCENTO GROUP), whose corporate name was VOCENTO-

TO MEDIATRADER, S.L.U. at the time of signing the contract with the

Atlas Agency.

Attached contract for the provision of services and transfer of rights signed on 16

April 2007 between LATIN AMERICAN TELEVISION AGENCY OF

SERVICES AND NEWS SPAIN, S.A. (Atlas Agency) and VOCENTO MEDIA-

TRADER, S.L.U.

In clause 2, "Procedure" of the aforementioned contract, it is indicated that "Through

the ATLAS website, where the latter will locate the contents that are the object of this

contract available to VMT (Vocento), which will select those that are

of your interest."

In Annex II of the aforementioned contract it is indicated that "On the date of signing this

agreement, the digital newspapers that belong to Vocento and that are the means to

through which the contents subject to transfer will be publicly communicated

of this contract are:

(…)

- Basque Newspaper (***URL.2).

(…)”

On 03/06/23, the following were incorporated into the inspection actions:

- The Legal Notice of the web portal ***URL.2, which indicates that "This page

website, with URL address ***URL.2 (“Website”), is operated by the company So-

Basque Society of Publications, S.A. (“Company”), with C.I.F. num.

A20004073, registered in the Mercantile Registry of Gipuzkoa, Book of Companies

49, Folio 118, Sheet No. 2,900, 1st Inscription whose domicile is at

Mikeletegi Pasealekua 1. 20009 - Donostia-San Sebastián. you can get more

information by sending an email to the following email address

***EMAIL.1.

- The Privacy Policy of the web portal ***URL.2, which indicates in point 1,

"Identification and contact details of the Joint Controllers of the treatment", which

following:

“The personal data that you provide through this Service (web page or

app), are the responsibility of the following Joint Controllers:

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

 The company responsible for this service, duly identified

in the Legal Notice (hereinafter, the "Company"), and

 Vocento Gestión de Medios y Servicios, S.L.U., with address at C/

Josefa Valcárcel, 40 bis, Madrid, with NIF B82462813 (hereinafter,

“VGMS”). (…)

Notwithstanding the foregoing, the Company is independently responsible with

regarding the processing of personal data included in the news with fi-

news and journalistic purposes”

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of the RGPD grants to each authority of

control and as established in articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD,

The Director of the Agency is competent to initiate and resolve this procedure

Spanish Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

Synthesis of the facts

According to the documentation provided, MEDIASET created and published a piece of news

Illustrated with a video showing a computer screen displaying

an Excel sheet with names and surnames of 56 women registered in the system

VioGén as victims of gender violence, as well as different classifications of

these depending on their specific circumstances (Pending O.P., active without O.P.,

active not locatable, new terminated).

Such news was made available by MEDIASET, on 03/31/22, to various entities with

those that have signed content assignment contracts, among which is

CONMUNICA MEDIATRADER S.L, intermediary of the VOCENTO GROUP (in

Go ahead, VOCENTO). The news is published on various web portals, including

finds ***URL.2, for which the complained-out party is responsible, which

belongs to VOCENTO.

According to the claimed party, he proceeded to immediately withdraw the video as soon as

has been informed of the request from the AEPD, providing a screenshot that

evidence.

As specified in the content assignment contract between MEDIASET and

VOCENTO (group to which the claimed party belongs), the delivery procedure

of news between them consists of the fact that the news is located by MEDIASET in the

Atlas Agency website, the other party to the contract being in charge of accessing the

web page and select those contents that were of interest, to

later publish them in your medium.

Right to data protection

II

People have the power to dispose of their personal data, as well as

on its dissemination, resulting, without a doubt, deserving of protection the person

whose personal data is disseminated in violation of the legal system.

Thus, the STC 292/2000, of November 30 provides that

“The content of the fundamental right to data protection consists of a power of disposal and control over personal data that empowers the person to decide which of these data to provide to a third party, be it the State or an individual, or which can this third party collect, and that also allows the individual to know who owns that personal data and for what, being able to oppose that possession or use. These powers of disposition and control over personal data, which constitute part of the content of the fundamental right to data protection are legally specified in the power to consent to the collection, obtaining and access to data personal data, their subsequent storage and treatment, as well as their use or possible uses, by a third party, be it the State or an individual. and that right to consent to the knowledge and treatment, computerized or not, of the data personal, requires as essential complements, on the one hand, the power to know at all times who has that personal data and to what use it is putting them, and, on the other hand, the power to oppose that possession and uses.

In this sense, and regardless of the legal basis legitimizing the treatment, all controllers must respect the principles of treatment included in article 5 of the GDPR. We will highlight article 5.1.c) of the GDPR which establishes that:

"1. Personal data will be

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those who are processed ("data minimization");"

However, we are faced with a fundamental right that is not absolute, since, if necessary, the Fundamental Right to Data Protection can give in to the prevalence of other rights and freedoms also constitutionally

recognized and protected, such as the Fundamental Right to Freedom of Information,

weighing it case by case.

However, in the present case, it must be considered that the treatment carried out

carried out by the complained party within the framework of the freedom of information has been

excessive, as there is no prevailing public interest in information in the dissemination of the

names and surnames of 56 victims of gender violence, making them clearly

identifiable. By weighing the conflicting interests and, taking into account the circumstances

concurrent in this case, that is, the especially sensitive nature of the data

and the intense affectation to the privacy of the victims deserves greater

Protection of the interest of the holders of the right to the protection of their data

personal information and that they not be disseminated in the face of the alleged public interest in their diffusion.

IV.

Information right

In the struggle between the Fundamental Rights to Freedom of Information in

relation to the Fundamental Right to the Protection of Personal Data, even

when an equal degree of protection is recognized for both constitutional rights,

ordinarily the first is usually endowed with prevalence by our courts, after

assess and weigh all the elements at stake.

However, preponderance does not mean prevalence when, after all the

concurrent circumstances in a specific case, the limits set are exceeded

normatively and jurisprudentially.

In this sense, the Article 29 Working Group in its Opinion 06/2014 on the

concept of legitimate interest of the data controller under the

Article 7 of Directive 95/46/EC, when examining the legal basis of the legitimate interest of the

Article 7.1.f) of Directive 95/46/CE, fully transferable to the current art. 6.1.f) of

GDPR, includes the right to freedom of expression or information as one of the

cases in which the question of legitimate interest may arise, asserting that,

“without prejudice to whether the interests of the data controller will ultimately prevail

term on the interests and rights of the interested parties when the

weighing test”.

Limits to the Fundamental Right to Freedom of Information

V

That said, the Fundamental Right to Freedom of Information is not

absolute. We can observe very clear limits established by the courts in the

civil sphere, in relation to the Right to Honor, to Personal and Family Privacy and to

the Image itself.

Thus, we will cite, for all, the STC 27/2020, of February 24, 2020 (appeal of

amparo 1369-2017) that provides, in relation to the image of a person, and

Starting from the undisputed fact that makes it identifiable, that:

“…the debated issue is reduced to pondering whether the non-consensual reproduction

of the image of an anonymous person, that is to say, of someone who is not

public figure, but who suddenly and involuntarily acquires a role

in the newsworthy event, in this case as a victim of the failed attempt to

murder by his brother and his subsequent suicide, was a

illegitimate interference in their fundamental right to their own image (art. 18.1

EC). […]

…that criminal events are newsworthy events, even with

independence of the character of private subject of the person affected by the

news. However, the limit is in the individualization, direct or indirect,

of the victim, since this information is not of public interest because it lacks

relevance for the information that is allowed to be transmitted (SSTC 20/1992, of 20

February; 219/1992, of December 3; 232/1993, of July 12; 52/2002, of

February 25; 121/2002, of May 20, and 127/2003, of June 30). So,

it is currently recognized by Law 4/2015, of April 27, on the statute of

victim of crime, in force since October 28, 2015, when it warns of

the need "from the public powers [to offer] a response as

as broad as possible, not only legal but also social, to the victims, not only

repairing the damage in the framework of a criminal proceeding, but also

minimizing other traumatic effects on the moral that his condition can

generate, all this regardless of their procedural situation. Therefore, the

present Statute, in line with European regulations on the matter and with the

demands posed by our society, intends, based on the

recognition of the dignity of the victims, the defense of their property

material and moral and, with it, those of the whole of society". In

Assumptions such as those raised in this appeal, this Court must grant

relevance to the prevalence of the right to the image of the victim of the crime

against information freedoms, since graphic information became idle

or superfluous because the photograph of the victim lacks real interest for the

transmission of information, in this case the apparent realization of a

murder and subsequent suicide. (underlining is ours).

We will add the STS, from its First Civil Chamber, 272/2011 of April 11, 2011

(rec. 1747/2008), in which, regarding the data necessary to provide a

information and limits to the public interest includes that:

“b) Trivial information is not protected (ATC 75/2006), but the fact that

provide data that is not necessary in a case of violation (full name,

initials of the last names, the portal of the street where the victim lived) that did not

they have community relevance, they do not respect the reservation, they only seek to satisfy the

curiosity, produce disturbances or annoyances and reveal in a way

unnecessary aspects of personal and private life, allowing neighbors,

close persons and relatives the full identification of the victim and the

knowledge in great detail of a seriously infringing act against

their dignity (STC 185/2002) or about a disease that has no interest

public and directly affects the irreducible sphere of privacy and that

it is revealed for the purpose of a pure joke or joke (STC 232/1993)”. (he

underlining is ours).

Likewise, the STS, of its First Civil Chamber, Judgment 661/2016 of 10

November 2016 (rec. 3318/2014), in relation to the recruitment and disclosure in court

of the image of a victim of gender violence provided that:

"1st) The interest of the questioned information is not discussed nor the right of the

television channel sued to broadcast images recorded during the act of

oral trial of the criminal case, since there is no limitation in this regard

agreed by the court.

C / Jorge Juan, 6

28001 – Madrid

2nd) The only controversial point is, therefore, whether the identification of the plaintiff as a victim of the crimes prosecuted in said criminal case, through close-ups of his face and the mention of his first name and place of residence, was also included in the fundamental right of the defendant television channel to transmit truthful information or, for the contrary, it was limited by the fundamental rights of the plaintiff to their personal privacy and their own image.

3rd) Regarding this matter, the jurisprudence has recognized the interest general and public relevance of information about criminal cases (judgment 547/2011, of July 20), which are accentuated in cases of mistreatment physical and psychological (judgments 128/2011, of March 1, and 547/2011, of July), but he has also pointed out, regarding the identification of the people involved in the trial, that the defendant and the victim do not are on a level of equality, because in terms of that there is room for a full identification, and not by initials alone, due to the nature and social significance of the crimes of mistreatment (judgment 547/2011, of 20 of July). […]

6) In short, the defendant television channel should have acted with the prudence of the diligent professional and avoid issuing images that represented the appellant in the foreground, either refraining from issuing the corresponding shots, either using technical procedures to blur their features and prevent their recognition (judgment 311/2013, of May 8). Similarly, he should also have avoided mentioning his first name, because

this piece of information, insufficient by itself to constitute illegitimate interference, became

be relevant when pronounced on the screen simultaneously with the image of the

plaintiff and add the mention of his place of residence, data all

they unnecessary for the essence of the content of the information, as

show the news about the same trial published the next day in

other media.

7th) The identification of the plaintiff by means of her image and the data

indicated personal data and its direct link to an episode of violence against

gender and other serious crimes, when the simultaneous disclosure or

of data referring to how the victim and her aggressor met and the

way in which the criminal acts occurred, supposes that the loss of the

anonymity would violate both the plaintiff's right to her own image,

by issuing their physical features, such as their personal and family intimacy, in

the extent to which some reserved data, belonging to your private life (which

went to the Internet to start a relationship or the intimate content of some of

their talks), devoid of offensive entity in a situation of anonymity,

they happened to have it from the moment that anyone who saw those

informative programs and who resided in the victim's locality could

know who they were referring to, so that the psychological damage inherent in their

condition of victim of crimes was added the non-material damage consisting of the fact that

details of his private life were known that he had not consented to do

public". (underlining is ours).

As we can see, a clear reference is made to the excessive treatment of

personal data (some of which are not of an intimate nature) to provide the

information, considering them unnecessary at all points in attention to the

concurrent circumstances. Sometimes the courts refer to intimate data,

but sometimes it is personal data that is not intimate, such as, for

For example, the image of a natural person obtained from a photograph published in a

social network or name and surname.

Balance between the Fundamental Right to Freedom of Information and the Right

Fundamental to the Protection of Personal Data

SAW

In the specific case examined, as indicated, the defendant published

a piece of news with the headline "An old man has been arrested for mistreating his wife during

56 years", which deals with women over 65 who are at risk

for gender violence, which was illustrated with a video showing the screen

of a computer in which an Excel sheet was displayed with the names and surnames

of 56 victims of gender violence as well as different classifications based on

their specific circumstances (Pending O.P., active without O.P., active not traceable,

new terminations). News obtained, under a content assignment contract, from

MEDIASET.

The Excel sheet issued in the video with the data of the victims of violence

of gender was obtained in the recording of an interview carried out by MEDIASET in the

barracks of the Civil Guard of Las Rozas, in the year 2010. In said interview,

for a few seconds the screen of a computer in which the Excel sheet appeared

with the aforementioned personal data of the victims of gender violence.

It is not a question, as in other cases examined by jurisprudence, of endowing

prevalence to a fundamental right over another, having to choose which one has more weight in a specific case. If not, rather, to find a balance between the two to achieve the achievement of the purpose of the first without undermining the second. The reconciliation of both rights is nothing new, since the European legislator mandates such conciliation in article 85 of the GDPR.

As we have seen previously, the Fundamental Right to Freedom of Information is not unlimited, since the jurisprudential interpretation when confronting it with other rights and freedoms does not allow the same in any case and with all breadth, but, nevertheless, the prevalence that the courts usually endow it can be seen limited by other fundamental rights that must also be respected. Thus observes its limitation when the personal data provided was unnecessary for the essence of the information content.

We must consider the special circumstances present in the supposed examined. These are personal data of 56 women victims of gender violence. gender and remember that Law 4/2015, of April 27, on the Statute of the victim of crime, provides special protection for victims of violent crimes. might even the circumstance that they are also victims of crimes against the sexual freedom or sexual indemnity, for which a special need for protection both in Organic Law 10/2022, of September 6, of

integral guarantee of sexual freedom as in the aforementioned Statute of the victim of the crime

Precisely because the obvious informative public interest in the news is not denied,
Given the general interest in cases of gender violence, in this specific case it is not
it is a matter of diminishing the Fundamental Right to Freedom of Information by the
prevalence of the Fundamental Right to the Protection of Personal Data,
but to make them fully compatible so that both are absolutely
guaranteed. That is, the freedom of information of the media is not questioned.
of communication but the weighting with the right to data protection based on
to the proportionality and need to publish personal data, in this case, of 56
victims of gender violence, as such a situation could have been easily resolved
with the use of usual technical procedures to prevent such dissemination,
such as the pixelation of the image where the computer screen appears with the
personal data of the victims.
At older we have to mean that the victims are anonymous people and our
Constitutional Court, for all the Constitutional Court Judgment 58/2018, of
June 4, states that public authorities, public officials and
public figures or persons engaged in activities involving public notoriety
“voluntarily accept the risk that their subjective personality rights
are affected by adverse criticism, opinions or disclosures and, therefore, the
The right to information reaches, in relation to them, its maximum level of effectiveness
legitimizing, insofar as his life and moral conduct participate in the general interest
with a greater intensity than that of those private persons who, without a vocation to
public projection, are circumstantially involved in matters of
public importance, to which it is necessary, therefore, to recognize a scope
privacy, which prevents granting general significance to facts or
behaviors that would have if they were referred to public figures".
The Judgment of the Court of Justice of the European Union (Second Chamber), of 14

February 2019, in case C 345/17, Sergejs Buivids, mentions various

Criteria to balance between the right to respect for privacy and the right to

freedom of expression, among which are "the contribution to a debate of

general interest, the notoriety of the affected person, the object of the report, the

previous behavior of the data subject, the content, form and repercussions of

the publication, the manner and circumstances in which information was obtained and its

veracity (see, in this regard, the judgment of the ECtHR of June 27, 2017,

Satakunnan Markkinapörssi

Finland,

CE:ECHR:2017:0627JUD000093113, section 165)".

Oy and Satamedia Oy c.

In such a way that for a matter to be considered of general interest,

public relevance, it will be not only for the person who intervenes, but also for the

matter to which it refers. Both requirements must concur, resulting, at greater

abundance of what was meant in the previous section, that in the case examined

the victims are not public persons; rather the contrary, it is of great interest that

are recognized by third parties, so it can mean a new

penalty to the one already suffered. Victims are anonymous people and must follow

being so, in such a way that their fundamental rights are fully guaranteed.

In the present case, (i) we are not dealing with personalities of public importance, in the

sense that such relevance is sufficient to understand that it supposes, ex lege, a

dispossession of your fundamental right to the protection of your personal data, and (ii) although we are dealing with facts "of public relevance", in the sense that they are revealed as "necessary" for the presentation of ideas or opinions of public interest, that necessity does not reach the provision of data that identifies the victims.

For this reason, and as expressed by the Supreme Court in its (civil) judgment 697/2019, of 19 December, the formation of a free public opinion does not require, nor does it justify, the affects the fundamental right to one's own image [in this case to the protection of personal data] with that seriousness and in a way that does not save the necessary connection with the identification of victims of gender violence.

It is worth mentioning the breach of point 1 of the Digital Pact for the protection of persons, signed by the entity involved, which establishes that "The signatories to the Charter will refrain from identifying in any way the victims of assaults, acts of violence or sexual content in their information or publish information from which, in general, your identity can be inferred in the case of people of no public relevance. All this without prejudice to the fact that the non-public persons may be involved in newsworthy events, in which case the informative coverage will be the necessary one to give adequate fulfillment to the right information, taking into account the peculiarities of each case".

VII

Every person responsible for the treatment has conferred obligations in terms of data protection, in the terms prescribed in the GDPR and in the LOPDGDD, being able to highlight, in terms of what interests us, proactive responsibility, article 5.2 of the GDPR, the assessment of risks and the implementation of measures of adequate security. Obligations that are even more relevant when, as in In the case we are examining, this one is especially sensitive.

Such obligations do not decline because we are before a data controller

that it is a means of communication.

The dissemination of the name and surnames of 56 victims of gender violence makes them

in identified persons who can be recognized by third parties, which implies a

very high and very likely risk that they may suffer damage to their rights and

liberties. This has happened in other cases of dissemination of personal data of

victims of gender violence. And this when it is not a proportional treatment or

necessary in relation to the information purposes pursued.

Classification and classification of the offense

VIII

In accordance with the evidence available at the present time of

agreement to start the disciplinary procedure, and without prejudice to what results from the

instruction, it is considered that the claimed party has processed data that was excessive

as they are not necessary for the purpose for which they were processed.

The known facts could constitute an infringement, attributable to the party

claimed, of article 5.1.c) of the GDPR, with the scope expressed in the

Previous legal grounds, which, if confirmed, could mean the

commission of the offense typified in article 83.5, section a) of the GDPR, which under

the heading "General conditions for the imposition of administrative fines"

provides that:

Violations of the following provisions will be penalized, according to

with paragraph 2, with administrative fines of EUR 20,000,000 as

maximum or, in the case of a company, an amount equivalent to 4%

maximum of the overall annual total turnover of the financial year

above, opting for the one with the highest amount:

a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute

offenses 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 result

contrary to this organic law".

For the purposes of the limitation period, article 72 of the LOPDGDD indicates:

Article 72. Offenses considered very serious.

"1. Based on what is established in article 83.5 of Regulation (EU)

2016/679 are considered very serious and will prescribe after three years the

offenses involving a substantial violation of the articles

mentioned therein and, in particular, the following:

a) The processing of personal data in violation of the principles and guarantees

established in article 5 of Regulation (EU) 2016/679."

IX

Sanction of the infraction

In order to determine the administrative fine to be imposed, the

provisions of articles 83.1 and 83.2 of the GDPR, precepts that state:

"Each control authority will guarantee that the imposition of fines

administrative procedures under this article for violations of the

this Regulation indicated in sections 4, 5 and 6 are in each case

individual effective, proportionate and dissuasive."

"Administrative fines will be imposed, depending on the

circumstances of each individual case, in addition to or in lieu of the

measures referred to in article 58, paragraph 2, letters a) to h) and j). when deciding

the imposition of an administrative fine and its amount in each individual case

shall take due account of: a) the nature, seriousness and duration of the

infringement, taking into account the nature, scope or purpose of the operation

treatment in question as well as the number of interested parties affected and the

level of damages they have suffered; b) the intention or

negligence in the offence; c) any measure taken by the controller or

in charge of the treatment to alleviate the damages and losses suffered by the

interested; d) the degree of responsibility of the controller or the person in charge of the

processing, taking into account the technical or organizational measures that have

applied under articles 25 and 32; e) any previous infringement committed

by the person in charge or in charge of the treatment; f) the degree of cooperation

with the control authority in order to remedy the infringement and mitigate

the possible adverse effects of the violation; g) the categories of data

personal character affected by the infringement; h) the way in which the authority of

control became aware of the infringement, in particular if the person responsible or the

person in charge reported the infringement and, if so, to what extent; i) when the

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

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

with the same matter, compliance with said measures; j) adherence to

codes of conduct under article 40 or certification mechanisms

approved in accordance with article 42, and k) any other aggravating factor or

mitigation applicable to the circumstances of the case, such as the benefits

financial gains or losses avoided, directly or indirectly, through

of the offence."

Regarding section k) of article 83.2 of the GDPR, the LOPDGDD, article 76,

"Sanctions and corrective measures", provides:

"2. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account: a) The continuous nature of the

infraction.b) Linking the activity of the infringer with the performance of

processing of personal data. c) The benefits obtained as

consequence of the commission of the offence. d) The possibility that the

conduct of the affected party could have led to the commission of the offence. and)

The existence of a merger by absorption process subsequent to the commission of

the infraction, which cannot be attributed to the absorbing entity. f) The affectation

to the rights of minors. g) Have, when it is not mandatory, a

data protection officer. h) Submission by the controller

or entrusted, on a voluntary basis, to alternative resolution mechanisms

of conflicts, in those cases in which there are controversies between

those and anyone interested."

In the present case, the following circumstances of

graduation:

- As aggravating circumstances:

- The scope or purpose of the data processing operation, as well as the

affected interested parties (article 83.2.a) of the GDPR): It is considered that nature

The nature of the infringement is very serious since it entails a loss of dispositions

tion and control over the personal data of the name and surname of persons

who have been victims of gender violence and who by disseminating said data per-

there is a certain risk that such persons may be recognized

by third parties, with the serious damages that this would cause them. So-

same, the number of people affected that amounts to

to 56.

-

The intent or negligence of the infringement of the claimed party (Article

83.2.b) of the GDPR): Although the Agency considers that there was no intentionality

by the media outlet, the Agency concludes that it was negligent

by not ensuring a procedure that guarantees the protection of data

personal in such sensitive circumstances, especially in the case of a

entity whose activity involves continuous processing of personal data

end users.

It is considered especially important to remember at this point, the Judgment of

the National Court of October 17, 2007 (rec. 63/2006), where it is indicated

that: "…the Supreme Court has understood that there is imprudence

whenever a legal duty of care is neglected, that is, when the

offender does not behave with the required diligence. And in the evaluation of the degree

of diligence, the professionalism or not of the

subject, and there is no doubt that, in the case now examined, when the

The appellant's activity is constant and abundant handling of data from

personal character must be insisted on the rigor and exquisite care for

comply with the legal provisions in this regard".

Categories of personal data affected by the infringement (article

-

83.2.g) of the GDPR): The dissemination of the news implies the certain possibility of

notify 56 victims of gender violence, which represents serious harm

for those affected, since said personal circumstance is linked to their

health. To a greater extent, as already indicated, in the victims of rape

gender violence occurs both in the circumstance of being victims of violent crimes

slow, which are endowed with special protection both in the aforementioned Law

4/2015, of April 27, of the Statute of the victim of crime. I could even with-

the circumstance that they are also victims of crimes against the

sexual freedom or sexual indemnity, for which there is also a special

essential need for protection both in Organic Law 10/2022, of September 6,

man, of integral guarantee of sexual freedom as in the aforementioned Statute

of the crime victim.

It is also considered that it is appropriate to graduate the sanction to be imposed in accordance with the

following circumstance regulated in article 76.2 of the LOPDGDD as an aggravating circumstance:

-

The linking of the activity of the offender with the performance of treatment of

personal data, (section b), considering that in the activity that is developed

rrolla personal data is involved.

Considering the exposed factors, the valuation that the fine would reach for the

violation of article 5.1.c) of the GDPR, without prejudice to what results from the instruction

of the procedure, is 150,000 euros (one hundred and fifty thousand euros).

X

adoption of measures

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If the infringement is confirmed, it could be agreed to impose on the person responsible the adoption of adequate measures to adjust its performance to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2.d) of the GDPR, according to the which each control authority may "order the person responsible or in charge of the processing that the processing operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a certain specified term…". The imposition of this measure is compatible with the sanction consisting of an administrative fine, according to the provisions of art. 83.2 of the GDPR.

It is noted that not meeting the requirements of this body may be considered as an administrative offense in accordance with the provisions of the GDPR, classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

Therefore, in accordance with the foregoing, by the Director of the Agency Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against the COMPANY VASCONGADA DE PUBLICACIONES, S.A., with CIF.: A20004073, for the alleged violation of article 5.1.c) of the GDPR, typified in article 83.5.a) of the GDPR.

SECOND: APPOINT D. B.B.B. as Instructor, and Dª C.C.C. as Secretary,

indicating that any of them may be challenged, if applicable, in accordance with the

established in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime

of the Public Sector (hereinafter, LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and its documentation and documents

obtained and generated by the General Sub-directorate of Data Inspection during the

investigation phase, all of them part of this administrative file.

FOURTH: That for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1

October, of the Common Administrative Procedure of Public Administrations (in

forward, LPACAP), the sanction that could correspond would be 150,000 euros

(one hundred fifty thousand euros), without prejudice to what results from the instruction of the

this sanctioning procedure.

FIFTH: NOTIFY this agreement to start the disciplinary file to the

BASQUE SOCIETY OF PUBLICATIONS, S.A. giving you a period of

audience of ten business days to formulate the allegations and present the

tests you deem appropriate.

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

may be considered a resolution proposal, as established in article

64.2.f) of the LPACAP.

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

sanction to be imposed was a fine, he may acknowledge his responsibility within the term

zo granted for the formulation of allegations to this initiation agreement; which
will entail a reduction of 20% of the sanction that should be imposed in the
present procedure. With the application of this reduction, the sanction would remain
established at 120,000 euros (one hundred and twenty thousand euros), resolving the procedure with
the imposition of this sanction.
In the same way, it may, at any time prior to the resolution of this
procedure, carry out the voluntary payment of the proposed sanction, which supposes
will give a reduction of 20% of its amount. With the application of this reduction, the
tion would be established at €120,000 (one hundred and twenty thousand euros), and its payment will imply the
termination of the procedure, without prejudice to the measures that may be imposed
won.
The reduction for the voluntary payment of the penalty is cumulative to the corresponding
apply for acknowledgment of responsibility, provided that this acknowledgment
of the responsibility is revealed within the period granted to formulate
allegations at the opening of the procedure. 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 both reductions were to be applied, the amount of the penalty would remain
established at 90,000 euros (ninety thousand euros).
In any case, the effectiveness of any of the two aforementioned reductions will be
conditioned to the withdrawal or waiver of any action or appeal through administrative
treatment against the sanction.
If you choose to proceed to the voluntary payment of any of the amounts indicated
above, you must make it effective by depositing it into account No. ES00
0000 0000 0000 0000 0000 open in the name of the Spanish Agency for the Protection of
Data in Banco CAIXABANK, S.A., indicating in the concept the reference number
of the procedure that appears in the heading of this document and the cause

of reduction of the amount to which it receives.

Likewise, you must send proof of income to the Sub-directorate General of Ins-

expectation to continue with the procedure in accordance with the amount entered.

gives.

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

date of the initiation agreement or, where applicable, of the draft initiation agreement. Elapsed-

After this period, its expiration will take place and, consequently, the file of actions;

in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the LPA-

CAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency.

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SECOND: On May 3, 2023, the claimed party has proceeded to pay

the sanction in the amount of 90,000 euros making use of the two reductions

provided for in the initiation Agreement transcribed above, which implies the

recognition 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 appeal via

against the sanction and acknowledgment of responsibility in relation to

the facts referred to in the Commencement Agreement.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in 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), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency

of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter, LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary 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 presumed perpetrator, in

any moment 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 offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

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 resource against the sanction.

The percentage reduction provided for in this section may be increased

according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202212888, in

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

SECOND: NOTIFY this resolution to SOCIEDAD VASCONGADA DE

PUBLICATIONS, S.A.

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

Resolution will be made public once the interested parties have been notified.

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

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

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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 for in article 46.1 of the referred Law.

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