 File No.: EXP202101997

RESOLUTION OF SANCTIONING PROCEDURE

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

to the following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated July 24, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against ***COMPANY.1 with NIF ***NIF.1 (hereinafter, the party

claimed or ***COMPANY.1), which, in addition to violating their right to the protection of

data, violate his dignity, undermine his fame, violate his honor,

causing economic damage. The reasons on which the claim is based are the following:

following:

. Posting by the claimed party on their Facebook page (“***URL.1”) and on their

website "***URL.2" of the personal data of the complaining party.

Among the publications displayed on Facebook, contributed with the claim,

includes one dated "July 18" whose details are outlined in the Proven Fact

Second.

The complaining party also provides a screenshot of other comments

published in the same profile, on the dates 06/26, 04, 05, 07 and 07/21/2021, with the

texts that are outlined in the Second Proven Fact.

On the other hand, it provides a screenshot with information inserted in the web

"***URL.2", detailed in the Third Proven Fact.

According to the complaining party, these data treatments imply non-legitimate use,

inadequate, disproportionate and unjustified processing of personal data. understand that

breaches the provisions of articles 5.1.f) and 32 of the GDPR, and must be penalized

the party claimed in accordance with the provisions of article 83.5.a) of the same

Regulation.

. The data processing outlined in the previous point is illegal, since it is carried out

carried out without the consent of the complaining party, and without the concurrence of any other of

the legitimate bases provided for in article 6 of the GDPR, which constitutes a

infringement typified in article 72.1.b) of the LOPDGDD, which must be penalized

in accordance with the provisions of article 83.5.a) of the GDPR.

. The defendant company and its manager fail to comply with the provisions of article 28 of

the LOPDGDD for not having adopted the necessary measures to avoid the damages that

the publication made on Facebook could cause the complaining party,

especially the economic damages that it is causing in the exploitation of the

“***COMPANY.1”.

. The personal data of the claiming party processed by the claimed party may

be accessed through Internet search engines with the name and surname of the party

claimant and the word "(...)" as search criteria. Provides two assumptions

results of this search, which lead to information contained on Facebook, in

those that include the name and surname of the complaining party; and associated images

also to this data:

“…”.

. The website "***URL.2" breaches the obligation to inform users, as well as the

obligation to have means for users and customers to exercise the

rights recognized in articles 15 to 22 of the GDPR, violating articles 11.2
and 12.2 of the LOPDGDD, which constitutes a very serious offense typified in the
Article 72.h) of the same Organic Law.

. The website "***URL.2" fails to comply with articles 10 and 22.2 of Law 34/2002, of 11
of July, of information society services and electronic commerce (in terms of
successive LSSI). Specifically, in relation to the installation of cookies, the part
complainant highlights that “1. There is no general warning text, explaining that when
browsing the web you are accepting the use of cookies; 2. There is no button to
accept this cookie law and that will make the information layer disappear. 3) No
there is a link with more information about the cookies used by your website,
explaining what they are and how to block or eliminate them depending on the
browser used.

Ends the claiming party requesting compensation for damages
that is causing the illegal processing of your personal data.

The complaining party considers that the violations indicated should be attributed to the
entity ***COMPANY.1 and the person who manages the Facebook profile "***URL.1"
and responsible for the website "***URL.2".

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights (in
forward LOPDGDD), said claim was transferred to the claimed party, for
to proceed with its analysis and inform this Agency within a month of the
actions carried out to adapt to the requirements established in the regulations of
Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of
October 1, of the Common Administrative Procedure of the Administrations
Public (hereinafter, LPACAP) by electronic notification, was not collected by

the person in charge, within the period of availability, understood as rejected

in accordance with the provisions of art. 43.2 of the LPACAP dated 10/01/2021, as stated

in the certificate in the file.

Although the notification was validly made by electronic means, assuming that

carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, under

information was sent on the same date of 10/01/2021 a copy again

by electronic notification, which was not collected by the claimed party either, and

also by post, which was returned with the excess indication. in said

notifications, they were reminded of their obligation to interact electronically with the

Administration, and was informed about the means of access to said notifications,

reiterating that, henceforth, you will be notified exclusively by means

electronics.

THIRD: Through the General Sub-directorate of Data Inspection you access the

information related to the claimed company available in the Mercantile Registry

Central, (…).

FOURTH: On 06/10/2022, by the General Subdirectorate of Data Inspection

the website "***URL.2" is accessed and it is verified that it includes email addresses

Contact email for information and reservations. Regarding the protection of

personal data offers the information that is outlined in the Proven Fact

Room.

FIFTH: On 06/01/2022, by the General Sub-Directorate of Data Inspection

the information available on the party claimed in “Axesor” is accessed. (…).

SIXTH: On 06/15/2022, by the Inspection Services of this Agency it was

performed checks on the web “***URL.2”, using Chrome browser after

delete cookies and cache, to verify the cookies loaded in the

browser when accessing the web and after browsing within it.

As a result of these verifications, which are formalized by

Inspection procedure of the same date, it is verified that only one

session cookie and strictly necessary.

SEVENTH: On 06/26/2022, the Director of the Spanish Protection Agency

of Data agreed to initiate disciplinary proceedings against the claimed party, in accordance with

the provisions of articles 63 and 64 of the LPACAP, for the alleged violation of the

Articles 13 and 6 of Regulation (EU) 2016/679 (General Regulation for the Protection of

Data, hereinafter GDPR), typified in articles 83.5.b) and 83.5.a) of the same

Regulation, and classified as mild and very serious for the purposes of prescription in the

Articles 74.c) and 72.1.b) of the LOPDGDD, respectively.

In the opening agreement it was determined that the sanction that could correspond,

attention to the existing evidence at the time of opening and without prejudice to the

that results from the instruction, would amount to a total of 6,000 euros.

Likewise, it was warned that the imputed infractions, if confirmed, may

entail the imposition of measures, according to the aforementioned article 58.2 d) of the GDPR.

EIGHTH: Notification of the aforementioned initiation agreement in accordance with the established regulations

in the LPACAP, the claimed party submitted a pleading in which it requests the

archive of the procedure and that the Judgment be taken into account (…). In said writing,

The defendant makes the following considerations:

1. On ***DATE.2, the claiming party, having fulfilled the contract that it had

with the part claimed, decided not to hand over the keys and stay in business

(…).

2. (…); and, due to the position of the complaining party, in June 2021 it filed a

demand (…).

3. Dealers (the claimed party) are solely responsible for this

business, its identity, its image, its customers, suppliers (...) and, as such,

cannot allow identity theft to be impersonated and deceived with false testimonies and

especially when the data is used (...) to do business on behalf of third parties.

4. Due to this situation, the dealers (the claimed party) were forced to

to notify by all possible means to its customers, suppliers and all

people who may require the services (...), through its website and Facebook,

to report fraud, theft, violence, coercion that the complaining party

was provoking (...) and all the people who were looking for the services (...). The

The complaining party has had multiple complaints from (...) for these events.

5. On ***DATE.1, a judgment was issued against the claimant, rejecting all

possible defense and counterclaim filed by it, which includes the

claim filed with the AEPD.

6. The facts that are the subject of this file have been resolved by the ***COURT.1 through

favor of the claimed party, rejecting any breach of privacy,

image and honor The lawsuit was filed in response to an extraordinary event precisely

for the protection of users and consumers (...) and the court has agreed with the

claimed party in all claims.

7. The claimed party made the necessary and possible communications in defense of its

honour, his business and its future.

At this time, all communications that relate said business to the party

claimant are annulled, because the same party claimed is the most harmed

with that information.

With this statement of allegations, the claimed party provides, among other things, the

following documentation:

. Judgment dated ***DATE.1, issued by ***COURT.1 in the Ordinary Trial

promoted by the claimed party, as plaintiff, against the complaining party, which

as defendant, by which the lease contract on which the

business (...) signed by the claimed party, as lessor, and the claiming party,

as a tenant, and the latter is sentenced to vacate the property with

launch warning if it does not.

This Judgment indicates the following:

"The defendant formulates a counterclaim based on breaches by the lessor regarding

notice... and seeks compensation for damages against his honor and own image that did not

may be the subject of a claim in this litigation, since they require a special procedure with

intervention of the Public Prosecutor".

NINTH: On 09/06/2022, a resolution proposal was formulated in the sense

following:

1. That the claimed party be penalized for a breach of article 13 of the GDPR,

typified in article 83.5.b) of the same Regulation, and classified as very serious

effects of prescription in article 74.c) of the LOPDGDD, with a fine of 2,000

euros (two thousand euros).

2. That the claimed party be penalized for a breach of article 6 of the GDPR,

typified in Article 83.5.a) of the GDPR, and classified as very serious for the purposes of

prescription in article 72.1.b) of the LOPDGDD, with a fine of 4,000 euros

(four thousand euros).

TENTH: The proposed resolution outlined in the Ninth Antecedent was

notified to the claimed party on 09/07/2022, granting them a term to

make allegations, which was extended at the request of the entity itself claimed.

Once said term has expired, on 10/03/2022, the Agency received

pleadings to the resolution proposal in which the claimed party

requests that the proposed sanction be replaced by a warning or,

secondarily, the amount of the fine is substantially reduced. bases his

request in the following considerations:

1. The action of the complaining party constitutes a clear abuse of right and

instrumentalizes the control authority, pursuing a personal revenge and

compromising the claimed party financially and reputationally, to the point of

have tried to impersonate the entity and created a false web page (***URL.3), the

which lacks a Privacy Policy, Legal Notice and an adequate Cookies Policy;

as well as a fake Facebook and Instagram profile.

This caused the responding party to attempt to protect the business and customers from

be scammed A trial was also necessary to expel him from the place and to leave

to economically and illegally exploit the business.

It understands that the procedure constitutes a clear abuse of rights that would create a

dangerous precedent.

2. Considers applicable the following mitigations, provided for in article 83 of the

GDPR and not contemplated in the resolution proposal:

. Article 83.2.c) of the GDPR: The intention of the claimed party has been to try

minimize the damage that would be caused in the processing of personal data of the

customers, taking into account that the claimant has even created a false website

(without any privacy policy or adequate legal text) to process the data

their personal information in a completely illegal manner.

. Article 83.2.e) of the RGPD: It is the first infraction that is attributed to the party

claimed after 25 years of operation.

. Article 83.2.f) of the GDPR: it has followed the procedure and makes itself available to the

control authority to cooperate in relation to this process, as well as the

possible open against the complaining party for identity theft, as well as

the processing of personal data that it has sought and intends to carry out through

your website of the data of our clients. Likewise, it has proceeded, on

09/21/2022, to hire a consultant specialized in compliance matters

normative, which will deal with the adequacy of the web page, for which the

Legal Notice and, where appropriate, the Cookies Policy (we have already proceeded to modify the

clause of the website, of which a copy is attached).

. Article 83.2.k) of the GDPR: The claimed party has been greatly harmed

financially and reputationally.

. Article 76.2.c) of the LOPDGDD: Not only have you not obtained any type of benefit in

the commission of the offenses charged, but that this event has caused

economic losses to the entity (lawyers, loss of clients, loss of income,

loss of reputation, contracting of specialized services in the matter, time,

etc.).

. Article 76.2.d) of the LOPDGDD: The conduct of the affected party clearly caused the

need of the claimed party to warn about the identity theft of the

business, as well as the illegal processing of personal data of customers.

. Article 76.2.f) of the LOPDGDD: No rights of minors have been affected

for either of the two offences.

3. In relation to the aggravating circumstances related to the infringement of article 13 GDPR

valued in the proposed resolution, the claimed party warns that it has few

clients or potential clients, as to appreciate the aggravation of the number of

interested; and that negligence and the degree of responsibility cannot be appreciated,

have hired a consultant for the adequacy of their treatments and the

update of the informative clause on its website, already arranged.

4. Reiterates that the event has only caused losses to the entity and therefore understands

that, if the abuse of rights is not appreciated, it would be appropriate to apply a sanction less

high, which, considering its current economic situation, would be detrimental and

disproportionate.

With its allegations, among other documentation, the claimed party provides a copy of the

informative clause regarding the protection of personal data inserted in your

web, whose text is the following:

“…. ”.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: ***COMPANY.1 is the owner of the Facebook page “***URL.1” and of the website “***URL.2”.

SECOND: In the year 2021, on the dates indicated, the entity ***COMPANY.1 posted on his Facebook profile (“***URL.1”) the information, documentation or following comments, all of them related to the complaining party:

“(…)”.

In this last publication an image of the web “***URL.1” is inserted.

(…)”.

In another comment an image is inserted with the following text:

“(…)”

THIRD: The entity ***COMPANY.1 published on its website (“***URL.2”) the comment following, relating to the complaining party:

“…”.

FOURTH: On 06/10/2022, by the General Subdirectorate of Data Inspection the website "***URL.2" is accessed and it is verified that it includes email addresses Contact email for information and reservations. Regarding the protection of personal data offers interested parties the following information:

“…”.

FUNDAMENTALS OF LAW

Yo

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: "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

Article 4 of the GDPR, under the heading "Definitions", provides the following:

"2) "processing": any operation or set of operations performed on data

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, comparison or interconnection, limitation, deletion or

destruction".

The claimed party is the owner of the website "***URL.2", which includes addresses

email so that users can request information about (…). The

Using this means of contact may lead to the collection of personal data

of the users who address the claimed party, which constitutes a treatment of

data for which the data controller, in this case the entity

***COMPANY.1, must comply with the principle of transparency, established in

Article 5.1 of the GDPR, according to which personal data will be "processed

lawful, loyal and transparent manner in relation to the interested party (lawfulness, loyalty and

transparency)"; and developed in Chapter III, Section 1, of the same Regulation

(articles 12 and following).

Article 12.1 of the GDPR establishes the obligation of the data controller

take the appropriate measures to "provide the interested party with all the information indicated in

articles 13 and 14, as well as any communication pursuant to articles 15 to

22 and 34 regarding the treatment, in a concise, transparent, intelligible and easy way.

access, in clear and simple language, in particular any information addressed to

child".

When personal data is collected directly from the interested party, the information

It must be provided at the same time that data collection takes place. He

Article 13 of the GDPR details this information in the following terms:

"1. When personal data relating to him or her is obtained from an interested party, the person responsible for the

treatment, at the time these are obtained, will provide you with all the information indicated

next:

a) the (…) and, where appropriate, its representative;

b) the contact details of the data protection officer, if applicable;

c) the purposes of the treatment for which the personal data are intended and the legal basis of the

treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the

responsible or of a third party;

e) the recipients or categories of recipients of personal data, if any;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a decision adequacy of the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate or appropriate guarantees and means to obtain a copy of these or the fact that they have been provided.

2. In addition to the information mentioned in section 1, the data controller will provide the interested party, at the time the personal data is obtained, the following information necessary to guarantee fair and transparent data processing:

a) the period during which the personal data will be kept or, when this is not possible, the criteria used to determine this term;

b) the existence of the right to request access to the data from the data controller personal information relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent at any time, without this affecting the legality of the treatment based on the consent prior to its withdrawal;

d) the right to file a claim with a control authority;

e) if the communication of personal data is a legal or contractual requirement, or a requirement necessary to sign a contract, and if the interested party is obliged to provide the data personal and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, referred to in the

Article 22, paragraphs 1 and 4, and, at least in such cases, significant information about the logic

applied, as well as the importance and expected consequences of said treatment for the

interested.

3. When the controller plans the subsequent processing of personal data

for a purpose other than that for which they were collected, will provide the interested party, with

prior to said further processing, information about that other purpose and any information

relevant additional pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and to the extent

that the interested party already has the information".

In accordance with these regulations, the duty to inform corresponds to the person responsible for the

processing of personal data.

In this case, as stated in the Fourth Proven Fact, it has been verified

that the information on the protection of personal data offered to users

users of the web "***URL.2", at the time of the opening of the procedure, did

reference only to the identity of the controller and the possibility of exercising

some of the rights of the interested parties regulated in the GDPR and the Law is cited

Organic 15/1999, of December 13, Protection of Personal Data,

and not the current regulations.

In this regard, it should be noted that the respondent entity, in its allegations to the

opening of the procedure, did not make any allegation regarding this infraction,

despite the fact that it was already charged in the aforementioned agreement.

Subsequently, on the occasion of the allegations to the resolution proposal, the party

The defendant has provided a copy of the personal data protection clause that has

recently included on its website, the text of which is transcribed in the Antecedent

Tenth. With this clause, users are informed about the ends regulated in

the aforementioned article 13 of the GDPR in relation to identity and contact details

of the person in charge, the purpose and legal basis of the treatment, the category of

recipients of personal data, the absence of international transfers,

the conservation period, the rights recognized to the interested parties and the means

provided for its exercise, the possibility of revoking consent, the right to

file a claim with this control authority and the non-existence of

automated decisions (this statement does not imply any pronouncement on

the conformity of the specific content of this clause, especially in relation

with the period of conservation of the data outlined in it; it is recommended

Review this term and the legal basis of the treatment or the authorization of mechanisms

for the provision of consent).

This new informative clause corrects the deficiencies noted in the clause

inserted in the web at the time the claim was made and on the date of

opening of the procedure, which is outlined in the Fourth Proven Fact. By

Therefore, this rectification does not prevent the imputed infringement from being consummated.

Therefore, the provisions of article 13 of the GDPR have not been complied with, which implies

the commission of an offense classified in article 83.5.b) of the GDPR. This precept,

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

provides the following:

Violations of the following provisions will be penalized, in accordance with section

2, with administrative fines of maximum EUR 20,000,000 or, in the case of a company,

of an amount equivalent to a maximum of 4% of the total global annual turnover of the

previous financial year, opting for the highest amount:

b) the rights of the interested parties in accordance with articles 12 to 22;(…)".

For the purposes of the limitation period, article 74 of the LOPDGDD indicates:

"Article 74. Offenses considered minor.

The remaining infractions of a merely

of the articles mentioned in paragraphs 4 and 5 of article 83 of Regulation (EU)

2016/679 and, in particular, the following:

a) Failure to comply with the principle of transparency of information or the right to

information of the affected party for not providing all the information required by articles 13 and 14 of the

Regulation (EU) 2016/679".

II

Article 6.1 of the GDPR establishes the assumptions that allow the use of

processing of personal data:

"1. Processing will only be lawful if at least one of the following conditions is met:

a) the interested party gave his consent for the processing of his personal data for one or

various 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 his request of pre-contractual measures;

c) the processing is necessary for compliance with a legal obligation applicable to the

responsible for the treatment;

d) the processing is necessary to protect vital interests of the data subject or of another person

physical;

e) the processing is necessary for the fulfillment of a task carried out in the public interest

or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the user.

responsible for the treatment or by a third party, provided that such interests are not

the interests or fundamental rights and freedoms of the data subject prevail

require the protection of personal data, in particular when the data subject is a child.

The provisions of letter f) of the first paragraph shall not apply to the treatment carried out by

public authorities in the exercise of their functions.

2. Member States may maintain or introduce more specific provisions in order to

adapt the application of the rules of this Regulation with respect to the treatment in

compliance with section 1, letters c) and e), setting more precisely requirements

treatment and other measures that guarantee lawful and equitable treatment, with

inclusion of other specific treatment situations under chapter IX.

3. The basis of the treatment indicated in section 1, letters c) and e), must be established by:

a) Union law, or

b) the law of the Member States that applies to the data controller.

The purpose of the treatment must be determined in said legal basis or, as regards

to the treatment referred to in section 1, letter e), will be necessary for the fulfillment of

a mission carried out in the public interest or in the exercise of public powers vested in the

responsible for the treatment. Said legal basis may contain specific provisions for

adapt the application of the rules of this Regulation, among others: the conditions

general rules that govern the legality of the treatment by the person in charge; data types

object of treatment; affected stakeholders; the entities to which you can communicate

personal data and the purposes of such communication; purpose limitation; the terms of

data storage, as well as processing operations and procedures,

including measures to ensure lawful and equitable treatment, such as those relating to

other specific situations of treatment according to chapter IX. Union law or

of the Member States will meet a public interest objective and be proportionate to the end

legitimate pursued.

4. When the treatment for a purpose other than that for which the data was collected

personal information is not based on the consent of the interested party or on Union Law or

of the Member States which constitutes a necessary and proportional measure in a company

democracy to safeguard the objectives indicated in article 23, paragraph 1, the

responsible for the treatment, in order to determine if the treatment for another purpose is

compatible with the purpose for which the personal data was initially collected, will take into account

account, among other things:

a) any relationship between the purposes for which the personal data was collected and

the purposes of the intended further processing;

b) the context in which the personal data was collected, in particular with regard to

to the relationship between the interested parties and the data controller;

c) the nature of the personal data, in particular when dealing with special categories

of personal data, in accordance with article 9, or personal data relating to convictions

and criminal offenses, in accordance with article 10;

d) the possible consequences for data subjects of the planned further processing;

e) the existence of adequate guarantees, which may include encryption or pseudonymization".

What is stated in Recital 40 et seq. of the GDPR is taken into account.

In the present case, the claimed entity is the owner of the Facebook profile "***URL.1"

and from the web "***URL.2". It is recorded in the proceedings that the claimed party inserted

comments on the aforementioned social network and on the website owned by it regarding the part

claimant, incorporating their personal data, such as the name and

surnames, telephone number used as a collection mechanism and bank account, in addition

of other information about the activity carried out by the complaining party and about a

(...) in which it intervenes as a defendant.

The incorporation of the personal data of the complaining party in these comments,

which are detailed in the Second and Third Proven Facts, which are

accessible to the general public, constitutes a processing of personal data.

There is no record, however, that the aforementioned processing of personal data was carried out

carried out by the claimed party under a legal basis that legitimizes them, were not

necessary for the fulfillment of the commercial relationship that linked both

parties (business lease (...)) and the purpose for which the

treatment of indicated data is not a purpose compatible with those that could

determine the collection of such personal data by the defendant.

In his arguments at the opening of the proceeding, the defendant states that

the complaining party breached the business lease agreement that

linked, (...), insofar as after the end of the contract on the date

***DATE.2 continued to occupy the business and facilities.

It indicates that, for this reason, the claimed party was forced to warn about the

indicated situation to customers and suppliers (...), making the communications

needed to defend your business.

However, the termination of the contract was controversial, as evidenced by the fact that

that the defendant filed a claim for that purpose. Therefore, at the moment

that the processing of personal data of the complaining party is carried out,

inserting the previously detailed information on the web page of the claimed party and on

his Facebook profile, the termination of the contract was not resolved. In any case,

Said situation did not legitimize the claimed party to use the data in question,

inserting them in comments accessible through the internet without any restriction,

whose content, moreover, went beyond a mere notice to customers and suppliers.

The same can be indicated in relation to the allegations made to the proposal

of resolution by the claimed entity when it indicates that it tried to protect the business

and to clients so that they were not cheated.

Also in his statement of allegations at the opening of the proceeding, the party

claimed added that in (...) against the claimant, and that said claim has

been upheld by the ***COURT.1 in the Judgment of ***DATE.1, in which the

declares the lease contract terminated (...) signed by the claimed party,

as lessor, and the claimant, as lessee, (...). The claimed party

states that this Judgment rejects any attack against privacy,

image and honor of the claimant, and dismisses the claim filed before

this Agency.

However, based on the statements contained in the Judgment itself, it is not

true the conclusion expressed by the complainant. The sentence is not pronounced

on this matter regarding the violation of the right to privacy of the party

claimant, expressly stating that it is not the subject of the litigation and that its resolution

requires a special procedure.

Finally, in response to the allegations to the motion for a resolution made

by the party complained about the intention of the complaining party when formulating its claim, which seeks, according to the claimant, to commit it financially and reputationally, instrumentalizing the control authority, it is interesting to specify that the subjective motivations that determined the filing of the claim did not are relevant to the procedure.

Neither can it be admitted that during the processing of allegations to the proposal of resolution, questions unrelated to the purpose of the procedure are raised, such as relating to the attempt by the complaining party to impersonate the complained party by creating a false web page, which, according to the defendant, lacks a privacy policy and Cookies policy. This resolution does not cover the possible incidents that can be seen on the website created by the claimant, which should be raised by the party complained against, if it chooses, by means of a claim independent that allows its separate examination.

Consequently, the aforementioned facts imply a violation of the provisions of the Article 6 of the GDPR, which gives rise to the application of the corrective powers that the Article 58 of the aforementioned Regulation grants the Spanish Agency for the Protection of data. Said violation is classified as an infraction in section 5.a) of article 83 of the GDPR, which under the heading "General conditions for the imposition of administrative fines" provides the following:

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

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

tenor of 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 the

Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the

present 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, they are considered

very serious and will prescribe after three years the infractions that suppose a violation

substance of the articles mentioned therein and, in particular, the following:

(…)

b) The processing of personal data without the fulfillment of any of the legal conditions of the

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

IV.

In the event of an infringement of the provisions of the GDPR, among the

corrective powers available to the Spanish Data Protection Agency,

as supervisory authority, article 58.2 of said Regulation contemplates the

following:

"2 Each control authority will have all the following corrective powers indicated to

continuation:

(…)

b) send a warning to any person in charge or person in charge of the treatment when the

processing operations have infringed the provisions of this Regulation;”

(...)

d) order the person in charge or in charge of the treatment that the treatment operations are

conform to the provisions of this Regulation, where appropriate, of a given

manner and within a specified period;

(…)

i) impose an administrative fine in accordance with article 83, in addition to or instead of the

measures mentioned in this section, according to the circumstances of each case

particular;".

According to the provisions of article 83.2 of the GDPR, the measure provided for in letter d)

above is compatible with the sanction consisting of an administrative fine.

V

In this case, in accordance with the facts exposed, it is considered that the sanction that

It would be appropriate to impose an administrative fine.

The fine imposed must be, in each individual case, effective, proportionate

and dissuasive, in accordance with the provisions of article 83.1 of the GDPR.

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

provisions of article 83, section 2, of the GDPR, which states the following:

"2. Administrative fines will be imposed, depending on the circumstances of each case.

individually, in addition to or in lieu of the measures contemplated in article 58,

section 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount

in each individual case due account shall be taken of:

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

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

affected stakeholders and the level of damages they have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to alleviate the

damages suffered by the interested parties;

d) the degree of responsibility of the controller or processor, taking into account

of the technical or organizational measures that have been applied by virtue of articles 25 and 32;

e) any previous infringement committed by the controller or processor;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular if the

Controller or processor notified 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 the same

matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or certification mechanisms

approved under article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as

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

the offence".

For its part, in relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in

its article 76, "Sanctions and corrective measures", establishes:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of Regulation (EU)

2016/679 will be applied taking into account the graduation criteria established in the

section 2 of said article.

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

may be taken into account:

a) The continuing nature of the offence.

b) Linking the offender's activity with data processing

personal.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have led to the commission of the

infringement.

e) The existence of a merger process by absorption subsequent to the commission of the infraction,

that cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate.

h) Submission by the person responsible or in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which there are

disputes between those and any interested party".

In accordance with the precepts indicated, for the purpose of setting the amount of the sanction to

imposed in the present case, it is considered appropriate to graduate the sanction to be imposed

in accordance with the following criteria established by the transcribed precepts:

1. Violation of article 13 of the GDPR, typified in article 83.5.b) and classified as

light for prescription purposes in article 74.c) of the LOPDGDD:

The following graduation criteria are considered concurrent as aggravating factors:

. Article 83.2.a) of the GDPR: "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".

. The number of interested parties: The defects appreciated in the fulfillment of the

duty to inform interested parties regarding data protection

personal data affects all people who provide their personal data to the

claimed party through the contacts enabled on its website.

The claimed party denies that this circumstance should be assessed as a

aggravating, due to the low number of customers or potential customers who

has. However, this circumstance is already taken into account when grading the

sanction based on the mitigating factors set out below.

The determinant of this aggravating circumstance is that the lack of information

appreciated affects all interested parties who contact the entity

claimed through its website.

. Article 83.2.b) of the GDPR: "b) intentionality or negligence in the infringement".

The negligence appreciated in the commission of the infraction. It is taken into account that neither

The applicable regulations on this matter have not even been updated on the web,

maintaining the appointment of Organic Law 15/1999.

. Article 83.2.d) of the GDPR: "d) the degree of responsibility of the controller or the

processor, taking into account technical or organizational measures

that they have applied by virtue of articles 25 and 32".

The accused entity does not have adequate procedures in place

action in the collection and processing of personal data, in what

refers to the collection and processing of personal data through its website,

so that the infringement is not the consequence of an anomaly in the operation

of these procedures but a defect in the data management system

personal designed by the person in charge.

Neither in this respect can the allegations of the defendant be upheld,

according to which these aggravating factors of negligence and degree of responsibility do not

should be appreciated because you have recently hired a consultant to

the adequacy of their treatments and the updating of the informative clause,

which has already been carried out. This update, which has occurred once

started the procedure, and any adaptation to the regulations that it makes in the

future in no way affects the negligence appreciated in the facts that are analyzed in

the procedure and the lack of adequacy of the procedures that had

implanted. In addition, it cannot be understood as mitigating, in any case, the

cessation of conduct that violates the legal system.

It is also considered that the circumstances concur as mitigating

following:

. Article 76.2.b) of the LOPDGDD: "b) Linking the offender's activity

with the processing of personal data".

The scant link between the activity of the offender and the performance of

processing of personal data.

. Article 83.2.k) of the GDPR: "k) any other aggravating or mitigating factor

applicable to the circumstances of the case, such as the financial benefits obtained

or losses avoided, directly or indirectly, through the breach".

. The status of microenterprise and volume of business of the claimed party.

(…).

Considering the exposed factors, the valuation that reaches the fine, for the violation of article 13 of the GDPR, is 2,000 euros (two thousand euros).

2. Violation for non-compliance with the provisions of article 6 of the GDPR, typified in article 83.5.a) and qualified as very serious for the purposes of prescription in the

Article 72.1.b) of the LOPDGDD:

The following graduation criteria are considered concurrent as aggravating factors:

. Article 83.2.a) of the GDPR: "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".

. The seriousness of the infringement, taking into account the nature of the posted comments.

. Article 83.2.b) of the GDPR: "b) intentionality or negligence in the infringement".

The intent appreciated in the commission of the offence, considering that the The defendant party had the will to disclose the personal data of the complaining party.

It is also considered that they concur as mitigating factors, in addition to the circumstances indicated in the previous offense, the following:

. Article 83.2.k) of the GDPR: "k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as the financial benefits obtained or losses avoided, directly or indirectly, through the breach".

. The infringement affects only the complaining party.

Considering the exposed factors, the valuation that reaches the fine, for the

violation of article 6 of the GDPR, is 4,000 euros (four thousand euros).

It should be noted that the defendant, in its response to the opening

of the procedure, he did not make any claim against the factors and criteria of

graduation exposed.

Subsequently, in his allegations to the motion for a resolution, in addition to what

indicated in relation to the graduation factors considered to establish the

fine from the violation of the provisions of article 13, the party claimed

considers that the following extenuating circumstances should be considered:

a) This is the first infraction that is attributed to the claimed party.

This Agency understands that none of the graduation factors considered is

mitigated by the fact that the claimed entity has not been the subject of a

prior sanctioning procedure, a circumstance that has been alleged

by the claimed entity to be considered as a mitigation.

In this regard, the Judgment of the AN, of 05/05/2021, rec. 1437/2020, indicates:

"It considers, on the other hand, that the non-commission of a

previous violation. Well, article 83.2 of the GDPR establishes that it must be taken into account

for the imposition of the administrative fine, among others, the circumstance "e) any infraction

committed by the person in charge or the person in charge of the treatment". It is a

aggravating circumstance, the fact that the budget for its application does not exist

entails that it cannot be taken into consideration, but it does not imply or allow, as it claims

the plaintiff, its application as mitigation".

According to the aforementioned article 83.2 of the GDPR, when deciding to impose a fine

administration and its amount must take into account "any previous infraction committed

by the person responsible." It is a normative provision that does not include the inexistence of

previous infractions as a factor for grading the fine, which must be

be understood as a criterion close to recidivism, although broader.

b) The degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement, considering that it has

Once the procedure has been attended, it is made available to the control authority to

cooperate in relation to it and has proceeded, on 09/21/2022, to

hire a consulting firm specializing in regulatory compliance, which

will take care of the adequacy of the web page.

As already indicated, the cessation of the conduct cannot be considered as mitigating.

infringement of the legal system.

c) The defendant has not obtained benefits derived from the alleged infringements.

Article 76.2 of the LOPDGDD, letter c), includes among the criteria that must be

weighed when setting the amount of the sanction "the benefits obtained as

consequence of the commission of the infraction" and not the absence of these benefits. TO

In this regard, the Judgment of the National Court of 05/05/2021 refers to the

need for the "presupposition" in fact contemplated in the norm to

that a certain graduation criterion can be applied, and, as has been said, the

absence of benefits is not among the circumstances regulated in the cited article.

This graduation criterion is established in the LOPDGDD in accordance with the provisions

in article 83.2.k) of the GDPR, according to which administrative fines will be imposed

taking into account any "aggravating or mitigating factor applicable to the

circumstances of the case, such as the financial benefits obtained or the losses avoided, directly or indirectly, through the infringement", it being understood that avoiding a loss has the same nature for these purposes as gains.

If we add to this that the sanctions must be "in each individual case" effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the GDPR, admit the absence of benefits as a mitigation, not only is it contrary to the assumptions of facts contemplated in article 76.2.c), but also contrary to the provisions of article 83.2.k) of the GDPR and the principles indicated.

Thus, assessing the absence of benefits as a mitigation would nullify the effect dissuasive of the fine, to the extent that it lessens the effect of the circumstances that effectively affect its quantification, reporting to the person in charge a benefit to the that he has not earned. It would be an artificial reduction of the sanction that can lead to understand that infringing the norm without obtaining benefits, financial or of the type whatever, it will not produce a negative effect proportional to the seriousness of the fact offender.

In any case, the administrative fines established in the GDPR, in accordance with the established in its article 83.2, are imposed depending on the circumstances of each individual case and, at present, the absence of benefits is not considered to be a adequate and decisive grading factor to assess the seriousness of the conduct offending. Only in the event that this absence of benefits is relevant to determine the degree of illegality and guilt present in the concrete

infringing action may be considered as an attenuation, in application of article

83.2.k) of the GDPR, which refers to "any other aggravating or mitigating factor

applicable to the circumstances of the case.

d) Invokes article 76.2.f) of the LOPDGDD, which refers to the effect on

rights of minors, this circumstance appears regulated as a factor that

aggravates the illegality when it occurs.

e) In relation to the infringement for the processing of personal data without a legal basis,

understands that they must be taken into consideration to set the amount of the fine the

measures taken to minimize the damage that would be caused in the processing of data

clients' personal data, taking into account that the claimant has created up to a

false web to treat the personal data of those in an illegal way. Nevertheless,

It should be noted that the provisions of article 83.2.c) of the GDPR are applicable when

the measures try to minimize the damage caused by the infringement committed, not the

caused by alleged infringements committed by third parties.

f) Based on the provisions of article 83.2.k) of the GDPR, alleges that the claimed party

It has been severely damaged financially and reputationally. However, this

circumstance, if it has occurred, does not derive from the sanctioned infraction. Besides,

considering that the graduation factors must be linked to the infractions

sanctioned, the estimation of this allegation would be equivalent to attenuating the responsibility

of the party claimed for the damages that his own conduct may have caused him.

d) The claimed party considers that the conduct of the affected party (the claiming party)

caused the need for this part to warn about the impersonation of the

business, as well as the illegal treatment of personal data of clients. To this

In this regard, it suffices to reiterate what has already been indicated in Fundamentals of Law III when

warned that the situation described by the claimed party did not legitimize the treatment

of data of the complaining party inserting them in comments accessible through

internet that went beyond a mere notice to customers and suppliers.

SAW

Once the infringement is confirmed, it is necessary to determine whether or not to impose the

responsible for adopting 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 which each control authority may “order the

controller or processor that the processing operations are

comply with the provisions of this Regulation, where appropriate, in a

certain manner and within a specified period…”. The imposition of this

This measure is compatible with the sanction consisting of an administrative fine, as

provided in art. 83.2 of the GDPR.

In this case, the claimed party has communicated in its allegations at the opening of the

procedure to have deleted personal data from its website and Facebook page

of the complaining party, and during the processing of the procedure has provided the

new informative clause inserted in its website available to users, therefore

that it is not appropriate to impose the adoption of additional measures to the sanction of a fine.

Therefore, in accordance with the applicable legislation and assessed the criteria of

graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE ***COMPANY.1, with NIF ***NIF.1, for a violation of the

Article 13 of the GDPR, typified in Article 83.5.b) of the same Regulation, and

classified as mild for prescription purposes in article 74.c) of the LOPDGDD,

a fine of 2,000 euros (two thousand euros).

SECOND: IMPOSE ***COMPANY.1, with NIF ***NIF.1, for a violation of the

Article 6 of the GDPR, defined in Article 83.5.a) of the same Regulation, and

classified as very serious for the purposes of prescription in article 72.1.b) of the

LOPDGDD, a fine of 4,000 euros (four thousand euros).

THIRD: NOTIFY this resolution to ***COMPANY.1

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment period

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, by means of its income, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, open in the name of the Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following or immediately following business month, and if

between the 16th and the last day of each month, both inclusive, the payment term

It will be until the 5th of the second following or immediately following business month.

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

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

Against this resolution, which puts an end to the administrative process in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

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

contentious-administrative appeal 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 for in article 46.1 of the

referred Law.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

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 through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [https://sedeagpd.gob.es/sede-electronica-

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

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

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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