

□ Procedure No.: PS/00470/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A., ***POST.1

(hereinafter, the claimant) dated 07/03/2019

filed a claim with the Spanish Data Protection Agency. The claim is

directs against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one) for having exposed the

09/19/2018 in your personal FACEBOOK profile your data (name and first surname in

relation to an intervention (...) against a criminal produced on 09/17/2018.

Provides:

-Printed sheets from FACEBOOK, under B.B.B., on 09/19 at 16:03 on a sheet in the

that appears (folio 17) with his name and surnames, 10/16/2018 (possible reference to the date of print of the sheet), which begins "I am going to speak clearly So much misinformation saturates me",

comments that they were trying to steal from some ships and that when they saw A.A.A. in the vehicle (...), they run away. Apart mentions the name and surnames of another

*** POSITION.1 that "approximately a year ago he had to request a transfer to the town of

***LOCATION.1 as a result of alleged harassment (...), still unresolved by

our town hall." In another post before the manifestations of a person who does not know

has to put the last name of a *** POSITION.1, the respondent responds that: "I limit myself to

transmit what is said on the street and what is on the street is popular voice" "The object of the post is the complaint of the lack of information we have (...). It is also commented that

These criminals are part of an organized gang that has been acting for this

area, don't you think we have the right to be informed and, where appropriate, prevented?

-In other four pages it provides "people who have shared this" being 19

people.

C-Copy of "supplementary report to the complaint XXX/2018 for violation of the law 4/2015 on the protection of citizen security", dated 10/16/2018, signed by the claimant, containing its manifestations in reference to a complaint in which it is proposed to sanction to B.B.B. and in which appears:

"It is unknown where he got the information that he knew who the man was.

*** POSITION.1 that had acted in the events that occurred, data belonging to the investigation that is currently in progress and that were only known by the components of the body, which through the database can access the information indicated".

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"With the data exposed by the accused, of the name and surnames of *** POSITION.1, as just by entering an internet browser and entering the data it is easily located like this like other data of yours."

-The result of the GOOGLE page containing various data and news is provided related to the claimant, among others:

A.A.A. *** POSITION.1, appearing in the news your photograph and identification with your data.

In some news and blogs, for example, ***BLOG.1 also features your photo, as well as others ***POST.1, and you can also see your second last name.

The claimant indicates in the claim that the respondent is a Councilor of

***PARTY.POLIT.1.

Clear specification of the causes that have motivated the incident that has given rise to

SECOND: In view of the facts stated, the claim was transferred to GROUP

MUNICIPAL OF ***PARTIDO.POLITICO.1, in the town hall of PALMA DEL CONDA-

DO, which receives on 09/3/2019, to report:

1.

to the claim.

two.

to avoid the occurrence of new incidents such as the one exposed.

3.

informed about the course and outcome of this claim.

Detail of the measures adopted by the person in charge to solve the incident and

Documentation proving that the claimant's right to be

On 10/7/2020, the City Council proceeded to return the document indicating that

The aforementioned GROUP is not located at said headquarters, understanding that there had been a notification improper or defective cation; having been received by a person other than the addressee.

The city council provided an address of the aforementioned GROUP, being sent the

11/13/2019, and resulting in "returned by unknown on 11/18/2019".

THIRD: On 12/16/2019, the director of the AEPD agrees to admit the claim for processing.
mation.

FOURTH: On 01/02/2020, a letter is received from the claimant indicating that "With

date 12/29, notification has been received from the AEPD (Spanish data protection agency)

these), where the admission to processing of said claim is agreed, however it has been observed

ford an error in it, because the complaint is against a specific person and not

against the municipal group of ***PARTIDO.POLITICO.1, as stated in the re-

solution. "It is requested that a new resolution be issued clarifying that the complaint is against B.B.B.

(former councilor of the municipal group ***PARTIDO.POLITICO.1(...))

FIFTH: On 03/03/2020, it is agreed by the director of the AEPD to initiate the procedure

penalty of warning to the claimed, for the alleged violation of article 5.1.a)

of the RGPD, in accordance with article 83.5.a) and 58.2.b) and d) of the aforementioned RGPD.

SIXTH: Allegations are received by the respondent on 07/03/2020 in which he indicates:

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-Prescription of the infraction. The event occurred on 09/19/2018 and has been notified on

03/12/2020, after the one-year period established in article 74 a) of the

LOPGDD for minor offenses.

-Indicates that the complaint was not addressed to him, but to the MUNICIPAL GROUP

***PARTIDO.POLITICO.1 which was against which said admission for processing was listed.

He states that, since the procedure against him has not been followed, he has not been

aware of the actions carried out prior to the notified resolution. without

have been able to participate in the previous performances. Do you think your rights have been violated?

right to effective judicial protection by causing him defenselessness, he has not been able to allege anything in his

defense by not having addressed the transfer to him, nor having had knowledge before the

initial agreement, of any act. In his opinion, this gives rise to annulment of the procedure.

-Considers that in the instruction phase resulting from the agreement of 03/03/2020 that has been

notified, requests have been made to another person, and he does not know his

content, having imposed a sanction without procedure.

-States that "the denounced publication was not specifically indicated to him – which I have been able to

identify by date and content and since it is the only one in which I have quoted the

complainant".

-Attached the reference to two sentences, of AN 11/29/2013 resource 455/2011 and of of 06/10/2014, appeal 166/2013, to justify that, since it is not possible to impose a measure of compliance or correction, which is the very essence of the warning, should be issued

File, Archive

-Indicates that you deleted the publication at the same time as the notification of the agreement of beginning, for which reason the imposition of the sanction is not considered necessary. Provide a link.

SEVENTH: On 10/1/2010, a resolution proposal is issued with the literal:

“That by the Director of the Spanish Agency for Data Protection, a sanction is made for B.B.B., with NIF ***NIF.1, for an infringement of article 5.1.a) of the RGPD, in accordance with article 83.5 a) of the RGPD, a fine of warning in accordance with the article 58.2.b) of the RGPD.”

No claims were received against them.

PROVEN FACTS

The claimant, ***POSITION.1 (...) claims against B.B.B. (the claimed) by

1)

having exposed in your personal FACEBOOK profile, since 09/19/2018, your data

(name and first surname in relation to an intervention (...) against an offender

Produced on 09/17/2018.

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2) The statement object of the claim is still visible, according to a printed copy with date 08/02/2019, date after entry of the claim, which is part of the proceedings.

3)

The facts are confirmed by the printed pages of FACEBOOK, provided by the claimant where under B.B.B., you see the date 10/16/2018 and the date that the news appears, on 09/19 at 4:03 p.m., commenting on the escape of some criminals who were persecuted by the claimant, announcing his name and first surname, to criticize the little information provided by the City Council. In the same comment mentions the name and surname of another *** POSITION.1 that “Approximately a year ago he had to request a transfer to the town of ***LOCATION.1 as a result of alleged harassment (...), still unresolved by our town hall.” The literal appears with 23 comments and 42 times shared. Some comments (19 people) indicate –“Thanks to you we learned many things as well as thanks to a.

***PARTIDO.POLITICO.1 thanks you for defending your ideas and proposals.

In another post before the manifestations of a person that he should not wear the last name of a *** POSITION.1, the respondent responds that: "I limit myself to transmitting what that is commented on the street and what is on the street is a popular voice" “The object of the post It is the denunciation of the lack of information that we have (...)

In seven other pages of FACEBOOK appear "People who have reacted, with about twenty people on each side of the page.

4) The claimant initially indicates that the respondent is a Councilor of ***PARTIDO.POLITICO.1, although in a letter after the admission for processing that had place on 12/16/2019, specifically on 01/02/2020 it presents a written document in the AEPD specifying that the municipal group has dissolved, not knowing if during the processing of this procedure is or continues to hold, where appropriate, said condition.

Manifests the claimed that he deleted the publication at the same time of

5)

the notification of the start agreement, which took place as indicated on 03/12/2020.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this process.

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II

Initially, the claimant indicates that the respondent is a Councilor of

***PARTIDO.POLITICO.1, although in a letter after the admission for processing that took place on 12/16/2019, specifically on 01/02/2020, it presents a letter to the AEPD specifying that the municipal group has been dissolved, and it is unknown whether during the processing of this procedure is or continues to hold, where applicable, said condition.

It should be indicated that the person or entity that determines as responsible the claimant does not bind to direct the imputation of the possible infraction to which consider responsible.

In this proceeding, no prior actions of investigation as defined in the LOPDGDD, carrying out a transfer of the claim whose purpose is to know what happened and possible corrective actions or

details of what happened, which can lead within a pre-established period, to the admission and continuation of the procedure or the inadmissibility of the same, whose nature and purpose is different from the previous investigative actions. Article 64.2 of the LOPDGDD indicates:

"two. When the purpose of the procedure is to determine the possible existence of an infringement of the provisions of Regulation (EU) 2016/679 and in the this organic law, will be initiated by means of an initial agreement adopted on its own initiative or as a result of claim.

"If the procedure is based on a claim filed with the Agency Spanish Data Protection, in advance, it will decide on its admission to procedure, in accordance with the provisions of article 65 of this organic law."

"Admitted for processing the claim as well as in the cases in which the Agency Spanish Data Protection Agency acts on its own initiative, prior to the agreement from the beginning, there may be a phase of preliminary investigation actions, which will be governed by what provided for in article 67 of this organic law."

The common thing about the previous actions when they are practiced with the transfers to determine admission, is that both can lead to the initiation of a procedure sanctioning party, on its initiation agreement form, or if no violation is disclosed, on file.

In the case of an initiation agreement, article 67.1 of said Law reiterates:

"Before the adoption of the agreement to initiate the procedure, and once it has been admitted for processing the claim, if any, the Spanish Agency for Data Protection may carry out carry out preliminary investigation actions in order to achieve a better determination of the facts and circumstances that justify the processing of the procedure."

The fact that the transfer was attempted to be made to one party and the initiation agreement is initiated against the claimant, it does not constitute a violation of any right insofar as considers that the person responsible for the infringement, the one who processes the data is the accused, the claimed, and the initial agreement is limited to motivating the facts and the imputation to the

claimed, without their rights having been violated because before the agreement they cannot speak properly of file nor is there therefore any right to know the information or actions that appear and that lead to the start agreement.

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Therefore, the preliminary investigation actions may or may not be carried out.

deduces that they should be carried out when it is not clear who is responsible or the terms of the commission of the offence. In this case, they are not practiced because the Director considers in her initial agreement, after the transfer procedures and the analysis of the facts, which appear clear indications that the data is contained in a page of a social network account under the name of the respondent, at a particular level, without any connection to any party or municipal group, only the ownership of the claimed party is mentioned with their name and surnames, and expressing their personal opinion, acting on their own behalf as deduces, carrying out the processing of the claimant's data, and even answering a question from an intervener in the network about the data, answering that she has the right to be informed.

Regarding the type of sanction that is proposed, a warning, the article indicates

58.2.b) of the GDPR:

"two. Each control authority will have all the following corrective powers indicated-
two below:

"b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation"

That it is different from the warning established by the LOPD until its repeal in the article 45.6 of the LOPD, namely:

“6. Exceptionally, the sanctioning body may, after hearing the interested parties and having regard to the nature of the facts and the significant concurrence of the criteria established in the previous section, not agreeing to open the procedure punisher and, instead, warn the responsible subject so that, within the period that the sanctioning body determines, certifies the adoption of the corrective measures that in each case they are pertinent, provided that the following presuppositions concur:

- a) That the facts constituted a minor or serious infraction in accordance with the provisions in this Law.
- b) That the offender had not been previously sanctioned or warned.

If the warning is not heeded within the term that the sanctioning body has determined, the corresponding sanctioning procedure will be opened by said breach."

The aforementioned judgment of the defendant refers to the previous procedure of warning, not the one instituted by the RGPD, which declares it as one more sanction for having broken the data protection regulations, which also according to the same RGPD may imply at the same time adapting the treatment to the indications of the authority of control (article 58.2 d): order the person in charge or in charge of the treatment that the processing operations comply with the provisions of this Regulation, when appropriate, in a certain way and within a specified period.”).

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Regarding the prescription of the infraction, it must be taken into account that there is a day date in which the data is exposed, another reference date that is in which the AEPD has verified that the infraction persists, continues to be exposed by the person claimed on the social network, and a date that the respondent refers to being removed from the social network, which was when he received the agreement.

The LOPDGDD establishes the qualification and prescription of infractions in the article 72.1.a), specifying:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679."

The date on which the offense was committed may be considered to be the date on which point to the date on which the exhibition with the data is recorded for the first time, "B.B.B., 09/19, 4:03 p.m." on a sheet that includes (with your name and surnames, 10/16/2018 (possible reference to the date of printing of the sheet)", considering a lasting infraction in the time to be able to be consulted during it, until it is withdrawn and therefore joins Infraction of a permanent nature Thus, the infraction from its date of commission, to the The date of receipt of the initiation agreement by the respondent would not be prescribed since The 3 years provided for in the LOPDGDD have elapsed.

On the allegation that the denounced publication was not indicated, in the agreement At the beginning, the date and time and the data and references necessary to know the note that it was, enough so that in an automated medium of which you are the owner know the object on which the claim is based

Therefore, the start agreement, in which the instructor is appointed, is the start of the instruction procedure that as indicated can last up to 9 months, and the

content of the requirements in the transfer, appears transparently referred to in the start agreement. Therefore, the allegations of defenselessness or invalidity of the proceedings do not they can be estimated.

III

The RGPD defines in its article 4:

1) "personal data": any information about an identified or identifiable natural person ("the interested"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as for example a name, an identification number, location data, an identifier in line or one or several elements of the physical, physiological, genetic, psychic, economic, cultural or social of said person;"

2) "processing": any operation or set of operations performed on data personal data or sets of personal data, whether by automated procedures or not,

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such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, suppression or destruction;

4) "file": any structured set of personal data, accessible in accordance with determined criteria, whether centralized, decentralized or distributed functionally or geographic;

7) "controller" or "controller": the natural or legal person, authority

public, service or other body that, alone or jointly with others, determines the ends and means of the treatment; if the law of the Union or of the Member States determines the purposes and means of treatment, the person responsible for treatment or the specific criteria for its appointment may be established by the Law of the Union or of the Member States;

The document presented by the claimant certifies that the claimed person makes some demonstrations in which to criticize the lack of information from the City Council exposes the data of a *** POSITION.1 (...) of the locality in a social network such as FACEBOOK by thread of a persecution that he carried out to imply that it is a matter of citizen security and given the seriousness of the events, the neighbors are not informed.

It does not follow that in the disposition of the data of ***PUESTO.1 and the pursuit of criminals and their disclosure to third parties through the social network that has intervened another will than that of the respondent who expresses his opinion in relation to or with the purpose that the residents of the town are not kept informed by the City Council, circumstance on the other hand that if he were to put that information into practice, it is not proportional or necessary that the data of the claimant be contained.

The claimed person performs a personal "treatment of character data" from the moment in which it is communicated by transmission, spreading it, and associating information. Treatment of personal data that can be considered as "automated", open to any person and at any time until in his case it had been removed from said page.

The Judgment of the CJEU of 6/11/2003, "Lindqvist", sections 19 and 24 to 27, deals with a case similar to the present, of a natural person, who worked as a volunteer in a church as catechist in Sweden. This person had created his own web page on the Internet, open to anyone, in which in a humorous tone he referred to his fellow volunteers- at church, revealing their names, phone numbers, hobbies, and in some cases commented that a colleague of hers was on sick leave due to a foot injury or illness, which

which was considered as a health data. Said sentence contains the following pronouncements:

CJEU notices:

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

which consists of referring, on a web page, to various people and identifying them

by name or by other means, such as your telephone number or information regarding your

working conditions and hobbies is a

fully or partially self-treatment

-

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

nuanced personal data

(...)

24. The concept of personal data

employing Article 3(1) of the Directive

95/46 includes, in accordance with the definition contained in article 2, letter a), of said Di-

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any information about an identified or identifiable natural person. this with

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The concept certainly includes a person's name together with their telephone number or other information.

training related to their working conditions or their hobbies.

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25. Regarding the concept of

treatment of said data that uses article 3, section

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do 1, of Directive 95/46, this includes, according to the definition of article 2, letter b),

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any operation or set of operations, carried out or not

of said Directive,

through automated procedures, and applied to personal data

. This last provision

-

The tion lists several examples of such operations, including communication by

transmission, dissemination or any other way that facilitates access to the data. From this it follows

derives that the conduct that consists in making reference, on a web page, to personal data

Such treatment should be considered.

☐

26. It remains to be determined whether such processing is partially or fully automated. A

In this regard, it should be noted that disseminating information on a web page implies,

in accordance with the technical and computer procedures that are currently applied, publish

said page on a server, as well as performing the necessary operations to make it

accessible to people who are connected to the Internet. These operations are carried out, least in part, in an automated way.

□

□

27. Therefore, the answer to the first question must be that the conduct that consists in making reference, on a web page, to various people and to identify them by name or by other means, such as your telephone number or information regarding your working conditions and his hobbies, constitutes a fully or partially automated processing of personal data

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in the sense of article 3, paragraph 1, of Directive 95/46.”

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This same Judgment refers to whether this type of action would be excluded from the application of data protection regulations if activities are considered exclusively personal or domestic, indicating:

“30. Ms. Lindqvist maintains that an individual who, in the exercise of his freedom of expression, creates various web pages within the framework of a non-profit activity or in his time. leisure time, does not carry out an economic activity and, therefore, his conduct is not subject to the Law. community right...

31. The Swedish Government argues that, by transposing Directive 95/46 into national law, the legislature Swedish dor I consider that the treatment, by a natural person, of personal data that consists in transmitting said data to an indeterminate number of recipients, for example, by means of the Internet, cannot be described as exclusively personal or domestic activities.

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in the sense of Article 3, paragraph 2, second indent, of Directive 95/46...

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□

45. Well, voluntary or religious activities such as those carried out by Ms. Lindqvist cannot be equated with the activities mentioned in the first indent of Article 3(2), of Directive 95/46 and, therefore, are not covered by that exception.

46 As regards the exception provided for in the second indent of Article 3(2) of the Directive 95/46, in the twelfth recital of the latter, relating to said exception, cites as well as examples of data processing carried out by a natural person in the exercise of exclusively personal or domestic activities the correspondence and the keeping of an address book. Consequently, this exception must be interpreted in the sense

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that it contemplates only the activities that fall within the framework of private life.

vada or family of individuals; Obviously, this is not the case for a treatment of personal data consisting of the dissemination of said data on the Internet in such a way that they are accessible to an indeterminate group of people.”

Therefore, the respondent also assumes the role of "data controller" as: the natural or legal person, authority, service or other body which, alone or jointly with others, determine the purposes and means of the treatment; “ defined in article 4.7 of the RGPD.

The CJEU has delimited this concept of data controller in a “widely
plia”, since the objective of said provision is to guarantee, by means of a definition

of the concept of responsible, an effective and complete protection of the interested parties

(STJUE July 29, 2019, "Fashion ID", section 66, citing the judgments of May 13,

2014, Google Spain, C-131/12, section 34; and the judgment of June 5, 2018, Wirts-

chaftakademie Schleswig-Holstein, C-210/16, paragraph 28).

In the present case, it is considered that it has been the person claimed, the one who has determined

the purposes and means of the treatment, since the purpose would consist of "publicly exposing and

take a position on the lack of information that the city council has" for the

local residents. Carrying out this data processing would require a legitimate basis

for it.

IV

The respondent does not allege any aspect about what is the legal basis that would legitimize the

treatment that it carries out of the personal data of the aforementioned, however, given that it could

to allege that he has used his freedom of expression, it is possible to assume that the legal basis that

would intend to use is that of legitimate interest, regulated in art. 6.1.f) RGPD: "the

treatment is necessary for the satisfaction of legitimate interests pursued by the

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

prevail the interests or the fundamental rights and freedoms of the interested party that

require the protection of personal data, in particular when the interested party is a child."

The following remarks are made.

a)

In the cited sentence "Lindqvist", it was also raised by the person in charge of the

processing the allegation that he had posted on the web page that had created the

names of your co-workers and other personal data, in the exercise of the

freedom of expression. To this, the CJEU responded as follows (paragraphs 85 to 87, and 90):

"85. Therefore, the fair balance between the rights and interests at stake must be sought more

either at the national level, by applying to specific cases the regulations that adapt the

Internal law to Directive 95/46.

86. In this context, fundamental rights are of particular importance, as

as evidenced by the main proceedings, in which it is necessary, in essence, to weigh, for

On the one hand, the freedom of expression of Ms. Lindqvist in the context of her work as

catechist, as well as the freedom to exercise activities that contribute to religious life and,

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on the other hand, the protection of the privacy of the people whose data included Mrs. Lindqvist

on your website.

87. Consequently, it is up to the authorities and jurisdictional bodies of the

Member States not only interpret their national law in accordance with the Directive

95/46, but also to ensure that the interpretation of this that they take as a basis does not enter into

conflict with the fundamental rights protected by the Community legal system or

with the other general principles of Community law such as the principle of

proportionality.

90. The answer to the sixth question must therefore be that the provisions of the Directive

95/46 do not entail, by themselves, a restriction contrary to the general principle of freedom

of expression or other rights and freedoms in force in the European Union and that have their

equivalent, among others, in Article 10 of the ECHR. It is up to the authorities and the

national jurisdictional bodies in charge of applying the national regulations that adapt

Internal Law to Directive 95/46 guarantee the fair balance between the rights and

interests at stake, including the fundamental rights protected by the legal system

community law.”

Of the requirements for the treatment for legitimate interest, deals with the opinion 6/2014 of the

a)

Working group on Data Protection of article 29, on the concept of legitimate interest

of the data controller pursuant to article 7 f) of Directive 95/46 CE

of the European Parliament and of the Council, relating to the protection of natural persons in relation to

regarding the processing of personal data and the free circulation of these data adopted

C on 04/09/2014. Although this Directive has been repealed by the RGPD, its basic principles

are still applicable.

Article 7, letter f) of said Directive stated: "Member States shall have the

Processing of personal data can only be carried out if: it is necessary for the satisfaction

of the legitimate interest pursued by the person in charge or by the third party or third parties to whom it is co-

communicate the data, provided that the interest in fundamental rights and freedoms does not prevail.

of the interested party that require protection in accordance with paragraph 1 of article 1 of

this Directive".

Section 95 of the aforementioned "Fashion ID" ruling has established that said

article 7, letter f), establishes three cumulative requirements for data processing

data is lawful, namely, first, that the data controller or third party

or third parties to whom the data is communicated pursue a legitimate interest; in second place,

the need to process personal data for the satisfaction of legitimate interest

persecuted, and, thirdly, the requirement that the rights and freedoms

of the interested party (judgment of May 4, 2017, Rīgas satiksme, C-13/16,

EU:C:2017:336, paragraph 28).

In this case, it can be seen:

1-Legitimate interest of the data controller: As data controller, the claim

mado, who at that time was a Councilor of the Municipal GROUP ***PARTIDO.POLITICO.1,

using a private private tool, such as the social network FACEBOOK in which it appears-

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ban their data and expressed their opinion, not that of any political party or political group, tries to convince that the informative policy of the city council to the ***PARTIDO.POLITICO.1 is absent, and for this he enters the data of at least one person, the claimant, ***POSITION.1 who identifies with the fact (...) that occurred.

The expression and formation of opinion is important but its content can equally be carried out without disclosing the data of this official in a social network of all-world-wide and with unknown repercussions. In this case, the interest seems clear, but the means are disproportionate.

2-The treatment does not seem necessary for the intended purpose or purposes, it implies an imbalance bribery of means between the parties and a treatment modality is used that is especially invasive and surprising to serve the aforementioned purpose, having a fundamental right and the same end could have been obtained without identifying him.

3- Regarding the interests or fundamental rights and freedoms of the interested party, appreciated in the appearance in social networks by the claimed party, it is part of not knowing the origin of the knowledge of the information it explains, but in any case, that the comments circulating on the street cannot mean the same as they are reflected in a written medium such as the social network and the disclosure of data to any person occurs enter that page.

In this case, the right to freedom of expression of the claimed because there is no legitimate interest in the exposed note.

Regarding the risks that its owner may suffer, their data appeared on the website related to

nate with his performance of the task (...), and could be fully identified helping to know from your initial data more of your data. Also, the fact that their data on the web does not allow them to be used as they have been in this case without a basis of legitimacy accredited by the claimed party.

As for the balance of what interests and rights and freedoms prevail, if those of the owner of the data or those of the data controller, outlining the rights that collide, that of data protection and that of freedom of expression, the following must be specified:

-The claimant had not previously participated or expressed any aspect in the exposed statement.

To reach the ends desired by the respondent, he criticizes the informative policy of the

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City Hall, exposing the data of public officials that the only thing they do is the work entrusted, it is not necessary to identify one of its employees, especially if the events occurred days before and were under investigation.

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In this case, the knowledge of your data is not of public relevance, your person lacks public projection, and the matter in which he was involved was in the development of his professional work that even if it is public, does not have to yield in the disposition of your data when the same purpose could be obtained by pointing out that it was a ***POST.1 and not recounting those facts that, within the news, affect the honor or privacy of the person concerned and which are revealed as "manifestly unnecessary and irrelevant

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for the public interest of information» (SSTC 105/1990, of June 6, FJ 8, and 121/2002, of May 20, FJ 5).

v

The person claimed, in a private capacity, with his name and surnames on FACEBOOK expresses their opinions, together with the data of the claimant, although in the use of the data of the affected party to concur any legitimate basis provided for in article 6.1 of the RGPD. The right of the claimant, who also exercises his trade as *** POSITION.1, that his data is not used in social networks, associated with the development of its task, when it is tries to underline by the defendant that the city council does not inform or reports little of the matters of interest to citizens, does not seem appropriate, necessary or justified. I know considers that compared to his nominal appointment, nothing significant is added by knowing his identity, nor is it necessary to criticize the scant information offered by the City hall.

Despite the circumstance that the claimant's data appears in GOOGLE in relation to other issues, the claimant is identified on FACEBOOK and is is related to different facts about which in both cases, it has not been obtained their consent, nor is the existence of a legitimate basis in this case accredited for your treatment. Under the principles of adequacy, pertinence, consistency and relevance in the use of the data, when treating them without the consent of the claimant, you can use FACEBOOK to express opinions. However, in this case, the identity of that person, ***POST.1, is not relevant to what is meant in the post, which was the lack of information to the residents of the town by the City Council, putting other two examples of such lack of information. The same results would have been obtained putting initials or mentioning exclusively that it was a ***POST.1 because the data personal does not add any quality to the news. Otherwise, the right is being sacrificed of its owner, that their data is not exposed in a medium in which they can be

multiply its effects by sharing the news with others.

The facts analyzed constitute an infraction, attributable to B.B.B., for violation

of article 5.1.a) of the RGPD that indicates:

1. The personal data will be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);

SAW

Article 83.5 a) of the RGPD, considers that the infringement of "the basic principles

for treatment, including the conditions for consent under articles

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

Regulation, with administrative fines of a maximum of €20,000,000 or, in the case of

of a company, of an amount equivalent to a maximum of 4% of the turnover

global annual total of the previous financial year, opting for the highest amount."

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Article 58.2 of the RGPD indicates: "Each control authority will have all the

following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with a warning

when the processing operations have violated the provisions of this Regulation-

mint;

Recital 148 of the RGPD indicates that in order to impose the corrective measure

adequate, special attention should be paid to the nature, severity and duration of the

infringement, or to any relevant prior infringement, and to any other circumstance

aggravating or mitigating. For natural persons, instead of sanctioning by means of a fine, impose a warning.

The information exposed in the social network supposes an automated treatment by the claimed, that using the FACEBOOK infrastructure discloses some facts and some data that allows the aforementioned ***POSITION.1 to be identified, together with the recent circumstances of the event and the ongoing investigation (...) that is being carried out due to such events.

In the present case, the exhibition, in addition to not having legitimacy, is not deemed proportional or necessary for the dissemination of the opinion that the council does not informs or informs little about events in the municipality. Whether or not it is commented on locality the event and the claimant, cannot have the same effects as if their data in a social network, stating your identity, occupation and event that occurred.

The use of social network systems in which personal data is entered, which in this case also refer to a professional performance of the aforementioned, has as primary issue, that of considering whether the same purpose pursued by the claimant in the information tion, could have been achieved without identifying ***POSITION.1, and the reference to another, since there is no reason to go to the aforementioned treatment if there is no relationship between that end and the means used, in this case, to refer to the claimant, together with another question from another ***POST.1.

In this case, this action supposes an interference in the right to availability of the data of the claimant in which it is estimated that the treatment is not necessary for that purpose, as there may be other less intrusive ways to achieve the purpose without trying your data . The term need should not be confused with useful, but with whether the treatment is objectively necessary for the purpose, and to consider in this case, in addition to the fact that it is not necessary, which is alluding to a recent action of a *** POSITION.1 of the Corps and State Security Forces in the risky venture he had, and which is reported in detail size, without also considering the claimed the added risks that such references could contain by the scope of access that the network has.

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Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency

RESOLVES:

FIRST: IMPOSE a warning sanction on B.B.B., with NIF ***NIF.1, for a

infringement of article 5.1.a) of the RGPD, as indicated in articles 83.5 a) and 58.2 b) of the GDPR.

SECOND: NOTIFY this resolution to B.B.B..

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

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

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

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

may optionally file an appeal for reconsideration before the Director of the Agency

Spanish Data Protection Authority within a month from the day following the

notification of this resolution or directly contentious-administrative appeal before the Chamber

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

article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13

July, regulatory of the Contentious-administrative Jurisdiction, in the term of two months to

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

46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, it may be

precautionary suspension of the firm decision in administrative proceedings if the interested party expresses

its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the

remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1.

You must also transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the day

following the notification of this resolution, it would end the suspension

precautionary

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-300320

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