 File No.: PS/00192/2022

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

to the following

BACKGROUND

FIRST: On April 26, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against CORPORACIÓN DE

SPANISH RADIO AND TELEVISION S.A. (hereinafter, the claimed party), through

the Agreement that is transcribed:

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File No.: PS/00192/2022

AGREEMENT TO START A SANCTION PROCEDURE

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

based on the following:

FACTS

FIRST: Don A.A.A. (hereinafter, the complaining party), dated April 8,

2021, filed a claim with the Spanish Data Protection Agency. The

The claim is directed, among others, against CORPORACIÓN DE RADIO Y TELEVISIÓN

ESPAÑOLA S.A., with CIF A84818558 (hereinafter, the claimed party). The motives

on which the claim is based are as follows:

The complaining party reports that several media outlets published in their

websites the audio of the statement before the judge of a rape victim

multiple, to illustrate the news regarding the holding of the trial in a case that was

very media. The complaining party provides links to the news published in the

claimed media websites.

On May 10, 2021, a new letter was received from the party

claimant stating that he has been able to verify that currently there is no

none of the claimed publications are available, but they do remain

The publications made in the profiles of these media on Twitter are available.

SECOND: On May 12, 2021, in accordance with article 65 of the

LOPDGDD, the claim filed by the claimant was admitted for processing.

THIRD: The General Subdirectorate for Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the investigative powers granted to the authorities of

control in article 58.1 of Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter RGPD), and in accordance with the provisions of the

Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the

following ends:

During the investigative actions, publications were found where

he could hear the victim's voice undistorted. For all those responsible for

treatment was issued, dated May 13, 2021, precautionary measure of withdrawal

urgent or distorted content of the voice of the intervener in such a way that

would be unidentifiable in the web addresses from which this website was accessible.

contents.

These extremes could be verified in relation to the claimed party:

- SPANISH RADIO AND TELEVISION CORPORATION S.A.

***URL.1

***URL.2

***URL.3

On July 9, 2021, this Agency received a letter sent by this

entity stating that on the same day 13 proceeded to eliminate the contents

referenced. It was verified that the three indicated links return a page error

Not found. Likewise, they inform this Agency that RTVE has proceeded to

withdraw in some cases and modify distorting the voice in others, the contents of

the web, in such a way that its access and disposal by

third parties, guaranteeing its preservation in the audiovisual archive (blocked). These

actions have been carried out in the RTVE podcasts, the visible programs of

TVE and in the various audiovisual archives of RTVE.

FOUNDATIONS OF LAW

Yo

Competition

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

(General Data Protection Regulation, hereinafter RGPD) recognizes each

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

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

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

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

of data.

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

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

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

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.”

II

Voice as personal data

The voice of a person, in accordance with article 4.1 of the RGPD, is personal data.

make it identifiable, and its protection, therefore, is the subject of said RGPD:

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

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

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

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

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

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

The voice is a personal and individual attribute of each natural person that is defined

for its height, intensity and timbre. Endowed with unique and singular distinctive features that

individualize it directly, associating it with a specific individual, it is molded

when speaking, being able to know, through it, the age, sex, state of health of the

individual, their way of being, their culture, their origin, their hormonal, emotional and

psychic. Elements of expression, idiolect or intonation, are also data of

personal character considered in conjunction with the voice.

For this reason, report 139/2017 of the Legal Office of this Agency states that "the

image as well as the voice of a person is a personal data, as it will be

any information that allows to determine, directly or indirectly, your identity

(…)”

In fact, the Judgment of the National High Court dated March 19, 2014 (rec.

176/2012) says that "the voice of a person constitutes personal data, as

as can be deduced from the definition offered by article 3.a) of the LOPD,

What

<<any information concerning natural persons identified or

identifiable>>, an issue that is not controversial.”

Article 4.2 of the RGPD defines "treatment" as: "any operation or set

of operations carried out on personal data or sets of personal data,

whether by automated procedures or not, such as the collection, registration,

organization, structuring, conservation, adaptation or modification, extraction,

consultation, use, communication by transmission, diffusion or any other form of

authorization of access, collation or interconnection, limitation, suppression or destruction.”

The inclusion of a person's voice in journalistic publications, which identifies or

makes a person identifiable, involves the processing of personal data and, therefore,

Therefore, the person in charge of the treatment that carries out the same is obliged to comply with

the obligations that for the person in charge of the treatment are arranged in the RGPD and in

the LOPDGDD.

III

Right to data protection

This proceeding is initiated because the respondent party published, on the sites website referred to in the facts, the audio of the statement before the judge of a victim of a multiple violation, to illustrate the news related to the trial being held in a case that was very mediatic. The voice of the victim could be seen clearly when recount in all crude details the multiple rape suffered. All this constitutes processing of personal data of the victim.

Individuals have the power to dispose of their personal data, including his voice, as well as its dissemination, resulting, without a doubt, worthy of protection of the person whose personal data is disseminated in violation of the legal legal.

Thus, the STC 292/2000, of November 30, provides that "the content of the right fundamental to data protection consists of a power of disposition and control on the personal data that empowers the person to decide which of these data provide to a third party, be it the State or an individual, or what this third party can collect, and that also allows the individual to know who owns that personal data and for what, being able to oppose that possession or use. These powers of disposal and control over personal data, which constitute part of the content of the right fundamental to data protection are legally specified in the power to consent to the collection, obtaining and access to personal data, its subsequent storage and treatment, as well as its use or possible uses, by a third party, be it the State or an individual. And that right to consent to knowledge and treatment, computerized or not, of the personal data, requires as complements essential, on the one hand, the ability to know at all times who has that personal data and to what use it is subjecting them, and, on the other hand, the power oppose such possession and uses".

In this sense, and regardless of the legal basis legitimizing the

treatment, all data controllers must respect the principles of

treatment collected in article 5 of the RGPD. We will highlight article 5.1.c) of the

RGPD that establishes that:

"1. Personal data will be

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which

that are processed (“data minimization”);”

However, we are faced with a fundamental right that is not absolute,

since, if necessary, the Fundamental Right to Data Protection may

yield to the prevalence of other rights and freedoms also constitutionally

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

Information, weighing it case by case.

However, in the present case, as we will explain, it must be considered that the

treatment carried out by the claimed party within the framework of the freedom of

information has been excessive, as there is no prevailing informational public interest in

the dissemination of the voice of the victim -without adding any added value to the information

keeping the real voice of the victim (without distorting, for example) -, under whose pretext

it seems that those data have been disclosed; voice that, added to the fact that it is

a highly publicized case, makes the victim clearly identifiable. When weighing the

conflicting interests and, taking into account the concurrent circumstances of this case,

that is, the particularly sensitive nature of personal data and the intense

affecting the privacy of the victim, the interest of the owner deserves greater protection

of the right to the protection of your personal data and that they are not disclosed to the

intended public interest in its dissemination.

IV

Right of information

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

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

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

Ordinarily, the first one tends to be endowed with prevalence by our courts, after

assess and weigh all the elements at stake.

However, preponderance does not mean prevalence when, having attended all the

concurrent circumstances in a specific case, exceed the limits set

normatively and jurisprudentially.

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

concept of legitimate interest of the data controller under the

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

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

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

assumptions in which the issue of legitimate interest may arise, asserting that "without

regardless of whether the interests of the data controller will ultimately prevail

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

weighing test".

v

Limits to the Fundamental Right to Freedom of Information.

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

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

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

the Image itself.

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

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

starting from the uncontroversial fact that makes it identifiable, that "…the question

debated is reduced to considering whether the non-consensual reproduction of the image of a

anonymous person, that is, someone who is not a public figure, but who acquires

suddenly and inadvertently a role in the newsworthy event, in this case as

victim of his brother's failed murder attempt and subsequent suicide

of this, supposed an illegitimate interference in his fundamental right to the own

image (art. 18.1 EC).

[…]

…that criminal events are newsworthy events, even with

independence of the character of private subject of the person affected by the news. Without

However, the limit is in the individualization, direct or indirect, of the victim, since

this data is not of public interest because it lacks relevance for the information

that is allowed to transmit (SSTC 20/1992, of February 20; 219/1992, of

december; 232/1993, of July 12; 52/2002, of February 25; 121/2002, of 20 of

May, and 127/2003, of June 30). Thus, it is currently recognized by Law 4/2015, of 27

of April, of the crime victim statute, in force since October 28, 2015,

when he warns of the need "from the public authorities [to offer] a

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

not only repairing the damage in the framework of a criminal proceeding, but also minimizing other traumatic effects on the moral that their condition can generate, all this regardless of their procedural situation. For this reason, the present Statute, in line with European regulations on the matter and with the demands that poses our society, intends, starting from the recognition of the dignity of the victims, the defense of their material and moral assets and, with it, those of the group of the society". In cases such as those raised in this appeal, this Court must give relevance to the prevalence of the right to the image of the crime victim against information freedoms, since graphic information became idle or superfluous because the photograph of the victim lacks real interest for the transmission of information, in this case the apparent execution of a homicide and subsequent suicide" (emphasis added).

We will add the STS, of its First Civil Chamber, 272/2011 of April 11, 2011 (rec. 1747/2008), in which, regarding the data necessary to provide a information and the limits to the public interest states that "b) Trivial information is not protects (ATC 75/2006), but the fact of providing unnecessary data in a case of violation (the full name, the initials of the surnames, the portal of the street where the victim lived) that have no community relevance, do not respect the reserve, only seek to satisfy curiosity, produce disturbances or annoyances and reveal unnecessarily aspects of personal and private life, allowing neighbors, close people and relatives the full identification of the victim and the knowledge with great detail of an act that seriously undermined his dignity (STC 185/2002) or about a disease that is not of public interest and affects direct to the irreducible area of intimacy and that is revealed to the effect of a pure joke or joke (STC 232/1993);".

Likewise, the STS, of its First Civil Chamber, Judgment 661/2016 of 10 November 2016 (rec. 3318/2014), in relation to the capture and disclosure in court of the image of a victim of gender-based violence provided that “1st) The interest of the questioned information nor the right of the defendant television channel to broadcast images recorded during the oral trial of the criminal case, since There is no limitation in this regard agreed by the judicial body.

2nd) The only controversial point is, therefore, whether the identification of the applicant as a victim of the crimes prosecuted in said criminal case, through first plans of his face and the mention of 03/31/2022 his first name and place of residence, was also included in the fundamental right of the chain of television demanded to transmit truthful information or, on the contrary, it was limited by the applicant's fundamental rights to personal privacy and your own image.

3rd) Regarding this matter, the jurisprudence has recognized the general interest and the public relevance of information on criminal cases (judgment 547/2011, of 20 of July), which are accentuated in cases of physical and psychological abuse (sentences 128/2011, of March 1, and 547/2011, of July 20), but has also pointed out, regarding the identification of the persons involved in the trial, that the defendant and the victim are not on an equal footing, because in terms of that one does fit a complete identification, and not only by his initials, due to the nature and social significance of the crimes of ill-treatment (judgment 547/2011, of July 20).

[…]

6th) In short, the defendant television network should have acted with the prudence of the diligent professional and avoid the emission of images that represented the recurrent in the foreground, either refraining from broadcasting the corresponding shots, either using technical procedures to blur their features and prevent their recognition (judgment 311/2013, of May 8). Similarly, it should also avoid mentioning his first name, because this piece of information, insufficient by itself to constituting illegitimate interference, became relevant when it was pronounced on the screen simultaneously with the image of the applicant and add the mention of her place of residence, data all of which are unnecessary for the essence of the content information, as evidenced by the news about the same trial published at next day in other media. 7th) The identification of the plaintiff by means of his image and personal data indicated and its direct link with an episode of gender-based violence and other serious crimes, when disclosure was foreseeable Simultaneous or subsequent data referring to how the victim and her aggressor met and the way in which the criminal acts occurred, assumes that the loss of anonymity violated both the plaintiff's right to her own image, by the emission of their physical features, such as their personal and family intimacy, to the extent that some reserved data, pertaining to his private life (which went to the Internet to initiate a relationship or the intimate content of some of their talks), lacking in offensive entity in a situation of anonymity, they came to have it from the moment that anyone who viewed those news programs and who resided in the locality of the victim could know who they were referring to, so that the damage psychological damage inherent to his condition as a victim of the crimes added the moral damage

consisting of the disclosure of information about his private life that he had not consented to

make public". (emphasis ours).

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

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

information, considering them unnecessary at all points in view of the

concurrent circumstances. Sometimes the courts refer to intimate data,

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

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

social network or the name and surnames.

SAW

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

Fundamental to the Protection of Personal Data.

In the specific case examined, as we have indicated, the party claimed

published, on the websites referred to in the facts, the audio of the statement before the

judge of a victim of a multiple violation, to illustrate the news of a very

media.

Thus, it is not a question, as in other cases examined in the case law, of endowing

prevalence of one fundamental right over another, having to choose which one has more

weight in a specific case. If not, rather, to find a balance between

both to achieve the achievement of the purpose of the first without undermining the second.

The conciliation of both rights is nothing new, since the legislator

European mandates such conciliation in article 85 of the RGPD.

As we have seen previously, the Fundamental Right to Freedom of

Information is not unlimited, since the jurisprudential interpretation when confronted
with other rights and freedoms does not allow in any case and with full extent the same,
but, nevertheless, the prevalence that the courts usually give it can be seen
limited by other fundamental rights that must also be respected. Thus
observes its limitation when the personal data provided was unnecessary for the
essence of the information content.

We must consider the special circumstances present in the supposed
examined. It is about a very young woman who has suffered a multiple violation. In
In the published recording, she is heard recounting, with a great emotional charge, the
sexual assault suffered in all its crudeness, narrating (...).

In addition, we cannot lose sight of the condition of victim of the woman whose voice, with
all the nuances exposed, has spread.

Let us remember, for merely illustrative purposes, that Law 4/2015, of April 27,
of the Statute of the victim of the crime foresees a special need of protection to the
victims of crimes against sexual freedom or sexual indemnity, as well as
victims of violent crimes, both circumstances that concur in the alleged
examined.

In this case, the situation of the victim (who is not in the
same level of equality as the accused) and what it means to spread your voice with
all its nuances, as well as the special protection that the
legal system that, without restricting the provision of information, must be done

compatible with the principle of data minimization, applicable on the form, the
means in which the information is supplied and disseminated due to the immediate effect on the data
personal information and the identification of the victim.
Precisely because the evident informative public interest in the news is not denied,
given the general interest in criminal cases, in this specific case, it is not about
to decay the Fundamental Right to Freedom of Information due to the prevalence
of the Fundamental Right to the Protection of Personal Data, but of
make them fully compatible so that both are absolutely
guaranteed. That is, the freedom of information of the media is not questioned.
of communication but the weighting with the right to data protection based on
to the proportionality and need to publish the specific personal data of the voice. Such
situation could have been solved with the use of technical procedures to
prevent voice recognition, such as, for example, the distortion of the voice of
the victim or the transcript of the account of the multiple rape, security measures
both, applied depending on the case in an ordinary way by means of
communication.
At older we have to mean that the victim is an anonymous person and our
Constitutional Court, by all STC 58/2018 of June 4, affirms that the
public authorities, public officials and public figures or dedicated to
activities that carry public notoriety “voluntarily accept the risk of
that their subjective rights of personality are affected by criticism, opinions
or adverse disclosures and, therefore, the right to information reaches, in relation to
with them, their maximum level of legitimating efficacy, insofar as their life and conduct
morality participate in the general interest with a greater intensity than that of those
private persons who, without a vocation for public projection, see themselves
circumstantially involved in matters of public importance, to which

Therefore, a higher level of privacy must be recognized, which prevents

grant general importance to facts or behaviors that would have it if they were referred to

to public figures.

The STJUE (Second Chamber) of February 14, 2019, in case C 345/17, Sergejs

Buivids mentions various criteria to weigh between the right to respect for

privacy and the right to freedom of expression, among which are “the

contribution to a debate of general interest, the notoriety of the person concerned, the

object of the report, the previous behavior of the interested party, the content, the form and

the repercussions of the publication, the form and the circumstances in which it was obtained

information and its veracity (see, in this sense, the judgment of the ECHR of 27

June 2017, Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland,

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

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

public relevance, they will be so not only because of the person who intervenes, but also because of the

matter to which it refers. Both requirements must be met, resulting, the greater the

abundance of what is meant in the previous section, which in the case examined

the victim is not a public person; quite the contrary, it is of great interest that

is recognized by third parties, so it may involve a new penalty

to the one already suffered. The victim is an anonymous person and must remain so, so

way that their fundamental rights are fully guaranteed.

In the present case, (i) we are not dealing with a figure of public relevance, in the

sense that such relevance is sufficient to understand that it supposes, ex lege, a dispossession of your fundamental right to the protection of your personal data, and (ii) although we are dealing with facts "of public relevance", in the sense that they are revealed as "necessary" for the presentation of ideas or opinions of public interest, that need does not extend to the provision of data that identifies the victim.

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

It is worth mentioning the breach of point 1 of the Digital Pact for the protection of people, signed by the entities involved, which establishes that "The signatories of the Charter will refrain from identifying in any way the victims of aggression, acts of violence or sexual content in their information or publish information from which, in general, your identity can be inferred when it comes to people without public relevance. All this without prejudice to the non-public persons may be involved in newsworthy events, in which case information coverage will be necessary to adequately comply with the right information, taking into account the peculiarities of each case".

7th

All data controllers have conferred obligations in terms of data protection, in the terms prescribed in the RGPD and in the LOPDGDD, being able to highlight, as far as what interests us, the proactive responsibility, article 5.2 of the RGPD, the assessment of the risks and the implementation of the measures adequate security. Obligations that are even more relevant when, as in the case we are examining, this is particularly sensitive.

Such obligations do not decay by finding us before a data controller.

be a means of communication.

If we add the diffusion of the victim's voice (with all its nuances), which makes it

in identifiable being able to be recognized by third parties, with the factual account that it makes

in relation to the violation suffered, there is a very high and very probable risk that

may suffer damage to their rights and freedoms. This has happened in other cases.

dissemination of personal data of victims of rape crimes. And this, in addition to

that with the diffusion of the victim's voice, she is once again condemned to

can be recognized by third parties, when it is not a proportional treatment or

necessary in relation to the information purposes pursued.

Processing of excessive data

In accordance with the evidence available at the present time of

agreement to initiate the sanctioning procedure, and without prejudice to what results from the

instruction, the respondent party is deemed to have processed data that was excessive

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

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

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

Previous grounds of law, which, if confirmed, could lead to the

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

the heading “General conditions for the imposition of administrative fines”

provides that:

“The infractions of the following dispositions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or,

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

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

of greater amount:

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

consent under articles 5, 6, 7 and 9;

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

infractions 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. Infractions considered very serious.

"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.

IX

Classification of the infraction

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

provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of administrative fines

under this Article for infringements of this Regulation

indicated in sections 4, 5 and 6 are in each individual case effective,

proportionate and dissuasive.”

“Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or as a substitute for the measures contemplated in the

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

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

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infringement;

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 person in charge or of the person in charge of the treatment,

taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

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 whether the person in charge or the person in charge notified the infringement and, if so, in what

measure;

i) when the measures indicated in article 58, section 2, have been ordered

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

same matter, compliance with said measures;

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

certification approved in accordance with 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 infringement."

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

"Sanctions and corrective measures", provides:

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

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatment of

personal information.

c) The profits obtained as a result of committing the offence.

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

of the offence.

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

infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

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

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

alternative conflict resolution mechanisms, in those cases in which

there are controversies between them and any interested party."

In an initial assessment, the graduation criteria are considered concurrent

following:

 Aggravating:

- Article 83.2.a) of the RGPD:

Nature, seriousness and duration of the infringement: The Agency considers that the

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

provision and control over personal data to a person who has been a victim of

a violent crime and against sexual integrity and that by disseminating your personal data

the condemnation again to be recognized by third parties, causing serious damage and

damages.

- Article 83.2.b) of the RGPD.

Intentionality or negligence in the infringement: Although the Agency considers that it does not

there was intent on the part of the communication medium, the Agency concludes that

was negligent in failing to ensure a procedure that guaranteed the protection of the

personal data in such sensitive circumstances, especially when in many

Sometimes the voice is distorted in the news so that it is not recognized

to the person speaking.

- Article 83.2.g) of the RGPD.

Categories of personal data affected by the infringement: The certain possibility of

recognize the victim of a crime as reporting the news, very serious, violent

and against sexual integrity (multiple rape), is a serious detriment to the

affected, since what happened is linked to their sexual life.

The amount of the fine that would correspond, without prejudice to what results from the

instruction of the procedure, is €50,000 (fifty thousand euros).

Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

HE REMEMBERS:

FIRST: START A SANCTIONING PROCEDURE against the CORPORATION OF

RADIO Y TELEVISIÓN ESPAÑOLA S.A., with CIF A84818558, for the alleged

infringement of article 5.1.c) of the RGPD, typified in article 83.5.a) of the RGPD.

SECOND: APPOINT B.B.B. and, as secretary, to C.C.C.,

indicating that any of them may be challenged, where appropriate, in accordance with the

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

Legal Department of the Public Sector (LRJSP).

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

claim filed by the claimant and its documentation, as well as the

documents obtained and generated by the Subdirectorate General for Inspection of

Data in the actions prior to the start of this sanctioning procedure.

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

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

sanction that could correspond would be €50,000 (fifty thousand euros), notwithstanding

of what results from the instruction.

FIFTH: NOTIFY this agreement to CORPORACIÓN DE RADIO Y

TELEVISIÓN ESPAÑOLA S.A., with CIF A84818558, granting it a term of

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

tests you deem appropriate. In your statement of arguments, you must provide your

NIF and the procedure number that appears in the heading of this

document.

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

may be considered a resolution proposal, as established in article

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

Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, you may recognize your

responsibility within the term granted for the formulation of allegations to the

this initiation agreement; which will entail a reduction of 20% of the

sanction to be imposed in this proceeding. With the application of this

reduction, the penalty would be established at €40,000 (forty thousand euros),

resolving the procedure with the imposition of this sanction.

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

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

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

the sanction would be established at €40,000 (forty thousand euros), and its payment will imply

the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding

apply for the acknowledgment of responsibility, provided that this acknowledgment

of the responsibility is revealed within the period granted to formulate

arguments at the opening of the procedure. The voluntary payment of the referred amount

in the previous paragraph may be done at any time prior to the resolution. In

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be

set at €30,000 (thirty thousand euros).

In any case, the effectiveness of any of the two reductions mentioned will be

conditioned to the abandonment or renunciation of any action or resource in via

administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts

indicated above €40,000 (forty thousand euros), or €30,000 (thirty thousand euros),

You must make it effective by depositing it in account number ES00 0000 0000 0000

0000 0000 opened in the name of the Spanish Agency for Data Protection in the

banking entity CAIXABANK, S.A., indicating in the concept the reference number

of the procedure that appears in the heading of this document and the cause of

reduction of the amount to which it is accepted.

Likewise, you must send proof of payment to the General Subdirectorate of

Inspection to proceed with the procedure in accordance with the quantity

entered.

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

date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of

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

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

LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

935-150322

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SECOND: On May 9, 2022, the claimed party has proceeded to pay

the sanction in the amount of 30,000 euros making use of the two reductions

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

acknowledgment of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to

the opening of the procedure, entails the waiver of any action or resource in via

administrative action against the sanction and acknowledgment of responsibility in relation to

the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

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

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

control authority and as established in articles 47 and 48.1 of the Law

Organic 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 Data Protection Agency.

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

II

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

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least, 20% of the amount of the proposed sanction, these being cumulative with each other. The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased

regulations."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00192/2022, of

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

SECOND: NOTIFY this resolution to CORPORACIÓN DE RADIO Y

SPANISH TELEVISION S.A.

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

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

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

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

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

contentious-administrative before the Contentious-administrative Chamber of the

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

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

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

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

aforementioned Law.

Sea Spain Marti

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