

□ File No.: PS/00158/2022

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claiming party), dated \*\*\*DATE.1,  
filed a claim with the Spanish Data Protection Agency. The motives  
on which the claim is based are the following:

The complaining party reported that several media outlets published in  
their websites the audio of the statement before the judge of a victim of a rape  
multiple, to illustrate the news regarding the holding of the trial in a case that was  
very mediatic. The complaining party provided links to the news published in  
the claimed media websites.

On \*\*\*DATE.2, a new letter sent by the claimant was received  
stating that he had been able to verify that it was no longer available.  
No publication of those claimed, but the publications did remain available.  
publications made in the profiles of these media outlets on Twitter.

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

THIRD: The General Subdirectorate of Data Inspection proceeded to carry out  
of previous investigative actions to clarify the facts in  
matter, by virtue of the investigative powers granted to the authorities of  
control in article 58.1 of Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter GDPR), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of the LOPDGDD, being aware of the following extremes:

During the investigation actions, publications were found where he could hear the victim's voice without distortion. For all those responsible for treatment was issued, dated \*\*\*DATE.4, precautionary measure of urgent withdrawal of content or distorted voice of the intervener in such a way that it would be unidentifiable in the web addresses from which this content was accessible. These extremes could be verified in relation to 20 MINUTOS EDITORA, S.L., with NIF B99083966 (hereinafter, the claimed party):

\*\*\*URL.1

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On \*\*\*DATE.5, a letter sent by this entity was received by this Agency informing that the content referenced in the precautionary measure had been replaced by a still image without voice on the same day it is received; verifying what has been stated.

FOURTH: On April 22, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (in hereafter, LPACAP), for the alleged infringement of article 5.1.c) of the GDPR, classified as in article 83.5 of the GDPR.

The aforementioned start-up agreement, in accordance with the rules established in the LPACAP, was notified to the claimed party on April 22, 2022.

FIFTH: With the registration date of April 27, 2022, the claimed party requested a copy of the file as well as an extension of the term to present allegations.

On April 28, 2022, the file was forwarded to the defendant, granting the

At the same time, a new term to present allegations.

SIXTH: The claimed party submitted a brief of allegations on \*\*\*DAY.1 of 2022, in the which, in summary, stated that:

1.- There is no proof of the facts in the file: In the report of previous proceedings, it is indicated that during the investigations carried out, he was located in \*\*\*URL.1 page content that included the undistorted voice of the victim and was

They verified these extremes, but there is no evidence of this.

While there is no video evidence, it cannot be confirmed if there was diffusion of the voice of the indicated person and, where appropriate, what statements or contents incorporated, or the duration of the same, or the time during which there would be state available, elements all of which are relevant to assess the infringement and the corresponding aggravating factors that apply.

For all these reasons, it does not accept the facts indicated or their assessment.

2.- Considers that the voice is not, necessarily and in any case, a data of character personal, and, therefore, its dissemination, where appropriate, does not always imply a treatment of data.

For this purpose, it invokes Opinion 4/2007, of June 20, of the Working Group of the Article 29, from whose analysis the elements that must be taken into account are extracted to determine if a person is identifiable and, therefore, the data is personal:

- The nature of the data: Even assuming that the voice is unique in objective sense, there are nuances that, even for someone who knows someone personally

a person, it can be very difficult to identify them.

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- The context: Identification is only possible through other data or information, and in the present case it is not feasible, combining all the information existing (young woman who was in \*\*\*LOCATION.1 at the time of the facts), distinguish the person from other individuals who share the noted features.

- The use of reasonable means for identification: The file does not show provides any element or justification that can prove that this person would be identifiable by his voice (or other factors). It does not admit that it is not no means necessary, on the one hand, due to the nature of the data and, on the other hand, because It is a recording in a courtroom, later edited and finally reproduced on other devices by the user or reader.

It considers that the treatment of the voice by a means of communication in this case would be to present the victim's story, in exercise of freedom of information, but never for the identification of the affected subject.

SEVENTH: On May 27, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency penalize 20 MINUTOS EDITORA, S.L., with NIF B99083966, for a violation of the Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR, with a fine of €50,000 (fifty thousand euros).

EIGHTH: Notification of the proposed resolution in accordance with the established rules

in the LPACAP, the claimed party submitted a brief of allegations on June 15,

2022 in which, in summary, he stated that:

1.- Reiterates the allegations regarding the fact that there is no evidence in the file

that there was any video on the page \*\*\*URL.1.

It points out that, it is true that in the response given to the requirement of the Agency for

date \*\*\*DATE.4 the following is indicated: "In response to the request, we inform you

than the content available in the news item published at the Internet address \*\*\*URL.1

was immediately replaced on the same day \*\*\*DAY.1 passed by a still image without

that, therefore, the voice of the intervening party be reproduced. Referring below,

that "the previous response was given by the lawyer who signs this document, who

was unaware of the published content, and given the need to meet the requirement,

indicated that it had been replaced by a still image. But the reality is that there was already

a still image to illustrate that news on the day of its publication on \*\*\*DAY.2."

To this end, the claimed party indicates that the foregoing can be verified by accessing

to the Archive.org repository, a service that stores alleged copies of pages

web throughout the world, being the content published there obtained by the entity by

your account from the original source, without it being possible to alter it later.

The claimed party points out that "by entering the URL of the news item, this is \*\*\*URL.1,

it can be verified that there is a screenshot of the news item dated \*\*\*DAY.2 of XXXX

(therefore, before the requirement of this body) in which there was already a

image.

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Thus, in \*\*\*URL.1, it can be seen that the photograph, from the room of the Provincial Court of \*\*\*LOCALIDAD.2, is the same one that currently appears in the news item available at \*\*\*URL.2”

On the other hand, the claimed party indicates, regarding the report of previous actions of investigation, that it "indicates that a series of publications were found where the victim's voice could be heard without distortion, as a result of the investigations initiated on \*\*\*DATE.2 in front of twelve entities. Regarding 20 Minutos Editora, S.L., it is included the URL and the response given by this party is verified in the sense that the content had been replaced by a fixed image, proving the above.”

Therefore, the defendant considers that in the file "there is no record or document within the meaning of art. 77.5 of the LPACAP that actually verifies the existence of the aforementioned video and its characteristics or content.” For "the presumption of veracity cannot be applied with respect to any document that allows verifying the specific facts attributable” to the claimed party.

2.- Reiterates the allegations made regarding the consideration of the voice as data staff.

NINTH: On October 27, 2022, the Director of the Spanish Agency for Data Protection agreed, under the provisions of article 87 of the LPACAP, practice the following complementary actions:

1.- That by the instructor of the procedure, diligence related to the content be carried out from the following web pages:

\*\*\*URL.1

\*\*\*URL.2

2.- That the Instructor of the procedure will carry out a diligence regarding whether in Archive.org there are other screenshots of 20 MINUTOS EDITORA, S.L. of the day \*\*\*DAY.2 of XXXX related to the news regarding the judicial hearing of the victim of (...) of

\*\*\*LOCATION.1, as well as the content of said captures.

On October 28, 2022, the procedure instructor conducted two errands:

1.- In one of them it states the following:

"dated October 27, a printout of the results of the consultations was obtained made to web pages:

\*\*\*URL.1

\*\*\*URL.2

When consulting the web page \*\*\*URL.1, the result is that "Wayback Machine has not archived that URL". (...)

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When consulting the web page \*\*\*URL.1, the news published by 20 minutos on \*\*\*DAY.2 of XXXX at 4:45 p.m. with the following headline: "\*\*\*HOLDER.1", in which a still photo of the Hearing Room of \*\*\*LOCATION.2 is seen during the trial for the multiple rape suffered by the victim. (...)

Through the last link, the content of the following web page was accessed:

\*\*\*URL.1 related to the capture of the news item by Archive.org on \*\*\*DAY.2 of XXXX at 15:42:37. (...)"

2.- In the other procedure, the instructor of the procedure states the following:

"dated October 27, Archive.org was searched for captures of 20 MINUTOS EDITORA, S.L., on \*\*\*DAY.2 of XXXX, related to the news regarding the judicial hearing of the victim of (...) of \*\*\*LOCATION.1.

For this purpose, <https://20minutos.es> was written in the Archive.org search engine, where found a calendar of the screenshots that Archive.org has made of the covers 20-minute digital over time.

The captures related to the day \*\*\*DAY.2 of XXXX can be found on the website \*\*\*URL.2, in which there are "snapshots" (captures) at 04.32.23h, at 09.35.24h, at 17.31.04, at 18.29.03 and at 22.06.47. (...)

Likewise, it is stated that the "snapshots" (captures) of the aforementioned web page related to the following times: 17.31.04h, 18.29.03h and 22.06.47h.

When consulting the capture related to \*\*\*DAY.2 of XXXX at 17.31.04h, you access the web page \*\*\*URL.2. In it you can see, among other news, one with the following headline: "\*\*\*\*HOLDER.1", which is accompanied by a still photo of the Courtroom \*\*\* LOCATION.2 during the trial for the multiple rape suffered by the victim. (...)

When consulting the capture related to \*\*\*DAY.2 of XXXX at 18.29.03h, you access the web page \*\*\*URL.2. In it you can see, among other news, one with the following headline: "\*\*\*\*HOLDER.1", which is accompanied by a photo with the video icon. (...)

When consulting the capture related to \*\*\*DAY.2 of XXXX at 22.06.47h, you access the web page \*\*\*URL.2. In it you can see, among other news, one with the following headline: "\*\*\*\*HOLDER.1", which is accompanied by a photo with the video icon. (...)"

TENTH: On November 7, 2022, the claimed party was notified of the result of the complementary actions, granting him a period of seven days to formulate the allegations that he considered pertinent.

With the registration date of November 15, 2022, the claimed party presented a brief in which, in summary, it indicates that "The result of all of the above does not it distorts, in our opinion, what this party has been upholding. It's more if confirms that, specifically and on the web page corresponding to the news



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object of this procedure, did not appear a video but an image or still photograph, as the instructor has been able to verify.

Certainly, on the web pages \*\*\*URL.1 and \*\*\*URL.2, which we understand to be correspond to web covers or to the main page of the edition of the day \*\*\*DAY.2 of XXXX, thumbnail images appear with an icon that suggests you might there may be a video file, but the reality is that these images do not correspond with the news, nor do they coincide with what appeared in the news. The aforementioned images in miniature, in addition and despite the icon in question, they are also still images. This part does not find an explanation for the above, since it does not know how it works of the system for obtaining the captures of XXXXXX, but we insist that it is not about a capture of the news in question but of a thumbnail (as we say, fixed) that simply reference to the news, nor, of course, can this prove that the news included a video when what is verified and accredited through the captures that yes correspond to the news is that it did not include a video but a still image.”

#### PROVEN FACTS

FIRST: On \*\*\*DATE.1, the claimant filed a claim with the Spanish Agency for Data Protection denouncing that various media communication published on their websites the audio of the statement before the judge of a victim of a multiple rape, to illustrate the news regarding the celebration of the trial in a case that was highly publicized, providing links to the news published on the websites of the claimed media.

On \*\*\*DATE.2, a new letter sent by the claimant was received stating that he has been able to verify that there are means that had eliminated that information, although it accompanied publications made by some media communication on Twitter where it was still available.

SECOND: On \*\*\*DATE.3, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

THIRD: The General Sub-directorate of Data Inspection, in the exercise of its investigative activities, found a publication of the Respondent where could hear the victim's voice undistorted at the following address:

\*\*\*URL.1

FOURTH: On \*\*\*DATE.4, the defendant was notified of a precautionary measure urgent removal of content or distorted voice of the intervener in a manner that would be unidentifiable in the web addresses from which this was accessible content, specifically:

\*\*\*URL.2

FIFTH: On \*\*\*DATE.5, this Agency received a letter sent by this entity informing that the content referenced in the precautionary measure had replaced by a fixed image without voice the same day it was received.

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SIXTH: It is proven in the report of previous actions of investigation of dated January 24, 2022, which verified what was stated by the party claimed in his writing of \*\*\*DATE.2, that is, it was verified that in the link \*\*\*URL.1 the video with the

The intervener's voice had been replaced by a still image without a voice.

SEVENTH: It is proven through diligence dated October 28, 2022 that

The web page \*\*\*URL.2 is stored on Archive.org, in which there is a “snapshot” of the day \*\*\*DAY.2 of XXXX, at 3:42:37 p.m., in which the photograph of the Hearing can be seen Provincial of \*\*\*LOCALIDAD.2 that accompanies a news item with the following headline:

”\*\*\*HOLDER.1”

EIGHTH: It is proven through diligence dated October 28, 2022 that

on Archive.org, in connection with the news item posted by the claimed party, you see the play icon of a video that accompanies the following headline: “\*\*\*HOLDER.1” in the following web pages:

- \*\*\*URL.1, relative to the “snapshot” of day \*\*\*DAY.2 of XXXX at 18.29.03.
- \*\*\*URL.2, relative to the “snapshot” of the day \*\*\*DAY.2 of XXXX at 22.06.47h.

## FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 RCPD grants to each authority of control and as established in articles 47 and 48.1 of the LOPDGGD, it is competent to initiate and resolve this procedure the Director of the Agency Spanish Data Protection.

Likewise, article 63.2 of the LOPDGGD 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

Indicates the claimed party in its brief of allegations to the initiation agreement that does not

There is no evidence in the file of the facts, since in the report of

previous proceedings, it is indicated that during the investigations carried out, he was located in

\*\*\*URL.1 page content that included the undistorted voice of the victim and was

They verified these extremes, but there is no evidence of this. And as long as there is no

evidence of any video, nor can it be corroborated if there was diffusion of the voice of

the indicated person and, where appropriate, what statements or content was incorporated, or the

duration of the same, or the time during which it would have been available, elements

all of them relevant to assess the offense and the corresponding aggravating factors that

apply, so you do not accept the facts or their assessment.

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In this regard, it should be noted that on \*\*\*DATE.4, the party was notified

claimed requirement of this Agency, consisting of:

- Withdrawal or distortion of the voice of the intervener, with the greatest immediacy

possible of the publication contained in the web address \*\*\*URL.1, as well as of

any other publications related to your entity in which it is

identifiable voice of the intervener, avoiding to the extent that the state of the

technology allows, the re-upload or re-upload of copies or exact replicas by the

yourself or other users.

- Withdrawal or modification of the contents in such a way that it makes it impossible to

access and disposition of the original by third parties, but guarantees its preservation,

purposes of guarding the evidence that may be necessary in the course of the

police or administrative investigation or legal proceedings that may be initiated.

- Inform this Spanish Agency for Data Protection about the

execution of the measure.

In order to respond to the aforementioned requirement, with the date of entry into the registry of

\*\*\*DATE.2, the claimed party filed the following document:

"We hereby acknowledge receipt of your request received on the past \*\*\*DATE.4

in relation to the file referenced above.

In response to the request, we inform you that the content available in the news

published at the Internet address \*\*\*URL.1 was immediately replaced the same

day \*\*\*DAY.1 passed through a still image without therefore reproducing the voice of the

intervener.

There were not and are not in this medium other publications in which the

voice of the victim

Likewise, we will keep the evidence in the indicated sense.

What we bring to your attention in compliance with the request made and

appropriate effects."

It is to this document of the claimed party that the report of

previous investigation proceedings when it states that "With the date of \*\*\*DATE.5

is received at this Agency, with registration number O00007128e2100022495, writing

sent by this entity informing that the content referenced in the measure

precautionary measure had been replaced by a fixed image without voice on the same day of receipt of

this.

What was stated was verified."

If indeed the claimed party had never published a video on the internet with the

undistorted statement of the victim, would not have been able to comply with the request

done, as he did.

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That the claimed party acknowledge in its document of \*\*\*DATE.5 that the publication of the video with the voice of the victim and now do not accept such a fact is a violation of the principle of own acts. As indicated in the Judgment of the Constitutional Court 73/1988, of April 21, "the so-called doctrine of acts own or rule that decrees the inadmissibility of venire contra factum propium arisen originally in the field of private law, means the link of the author of a declaration of will generally of a tacit nature to the objective sense of the itself and the impossibility of later adopting a contradictory behavior, which finds its ultimate foundation in the protection that objectively requires the trust that can be reasonably placed in the behavior of others and the rule of good faith that imposes the duty of consistency in the behavior and therefore limits the exercise of objective rights".

Or as stated in the Supreme Court Judgment 760/2013, of December 3: "The doctrine that is invoked constitutes a general principle of law that prohibits going against one's own acts (nemo potest contra propium actum venire) as a limit to the exercise of a subjective right or of a faculty: this is how the sentences of May 9 are expressed 2000 and May 21, 2001. It refers to suitable acts to reveal a legal relationship, says the judgment of October 22, 2002, which reiterates what the judgment of 25 October 2000 in the sense that it is based on good faith and on the protection of the trust that the conduct produces; confidence that also stand out the judgments of February 16, 2005 and January 16, 2006, as well as that it is doctrine based on the principle of good faith; grounds on which the judgment of October 17, 2006. What is reiterated by subsequent judgments, such as those of October 2,

2007, October 31, 2007, January 19, 2010 and July 1, 2011; the latter stands out,

In addition to reiterating all of the above, which implies a legal link, it must be very surely and certainly cautious”.

Indicates the claimed party in its pleadings to the proposed resolution

It is true that in the response given to the Agency's request dated

\*\*\*DATE.4 it was indicated that "In response to the request, we inform you that the

content available in the news item published at the Internet address \*\*\*URL.1 was

immediately replaced on the same day \*\*\*DAY.1 passed by a still image without,

therefore, the voice of the intervener is reproduced.” Although, he continues recounting the part

claimed, "the previous response was given by the lawyer who signs this document, who

was unaware of the published content, and given the need to meet the requirement,

indicated that it had been replaced by a still image. But the reality is that there was already

a still image to illustrate that news on the day of its publication on \*\*\*DAY.2.”

To this end, the claimed party indicates that the foregoing can be verified by accessing

to the Archive.org repository, a service that stores alleged copies of pages

web throughout the world, being the content published there obtained by the entity by

your account from the original source, without it being possible to alter it later.

The claimed party points out that "by entering the URL of the news item, this is \*\*\*URL.1,

it can be verified that there is a screenshot of the news item dated \*\*\*DAY.2 of XXXX

(therefore, before the requirement of this body) in which there was already a

image.

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Thus, in \*\*\*URL.1, it can be seen that the photograph, from the room of the Provincial Court of \*\*\*LOCALIDAD.2, is the same one that currently appears in the news item available at \*\*\*URL.2”.

The mentioned web page \*\*\*URL.1 corresponds to the publication of the news with the headline "\*\*\*\*HOLDER.1" on \*\*\*DAY.2 of XXXX at 3:42:37 p.m., and there is a room photography.

On the other hand, on the web page \*\*\*URL.1, related to the capture of the news by Archive.org on \*\*\*DAY.2 of XXXX at 15:42:37, Archive.org indicates that “This calendar view assigns the number of times (...) was tracked by the Wayback Machine, not how many times the site was actually updated.

Further information in the FAQ” (emphasis added).

This means that even if there is a “snapshot” on Archive.org of the web page of the news dated \*\*\*DAY.2 of XXXX at 3:42:37 p.m., later the claimed party could have made an update to its content that Archive.org hasn't tracked it down, as it has.

And it is that in Archive.org there are also two snapshots of web pages of the claimed part, corresponding to the cover of your digital newspaper of the day \*\*\*DAY.2 of XXXX, in which you can see the play icon of a video accompanying the next one holder: “\*\*\*\*HOLDER.1”. Specifically, such pages are:

- \*\*\*URL.1, relative to the “snapshot” of day \*\*\*DAY.2 of XXXX at 18.29.03.
- \*\*\*URL.2, relative to the “snapshot” of the day \*\*\*DAY.2 of XXXX at 22.06.47h.

The claimed party in its brief of November 15, 2022, states that these thumbnail images with an icon that suggests there might be a file video, but the reality is that these images do not correspond to the news.”

We cannot share such a statement, since the headline of both the news and the



The front page of the digital newspaper in this regard is always the same: “\*\*\*HOLDER.1”.

It must be remembered that \*\*\*DAY.2 of XXXX is when the declaration of

the victim before the courtroom of the Provincial Court of \*\*\*LOCATION.2. So it is

Logically, at 3:42:37 p.m., the time of the publication of the news item in which the photo is seen

of the aforementioned judicial body, the media did not yet have the

video, being later (at 18.29.03h) when he published it, although with the voice of

the victim without distorting.

For this reason, when this Agency notified the claimed party, on

\*\*\*DATE.4, request for removal of the content or distortion of the voice of the

victim was able to give the response, previously transcribed, in which they acknowledge that this

That same day they proceeded to replace the video with a still image of the room where the

held the trial.

On the other hand, when indicating the claimed party, in his pleadings to the

beginning, that there is no evidence in the file of what the report of

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previous investigation actions, forget the value of documents

signed by officials who carry out research activities, since they

these, as indicated in article 51.4 of the LOPDGDD have "the consideration of

agents of the authority in the exercise of their functions". And in accordance with the

Article 77.5 of the LPACAP, "The documents formalized by the officials to the

that the condition of authority is recognized and in which, observing the requirements

corresponding legal documents, the facts verified by those will be

proof of these unless proven otherwise. That is, they enjoy presumption iuris tantum veracity, and unless the claimed party proves otherwise, it which has not happened in the present case, its content is presumed true. However, the claimed party, in its statement of allegations to the proposal for resolution continues to insist that in the file "there is no record or document in the sense of art. 77.5 of the LPACAP that actually verifies the existence of the referred video and its characteristics or content." For "the presumption of veracity does not can be applied with respect to any document that allows verification of the facts in attributable" to the claimed party.

In this regard, it should be noted that in terms of personal data protection:

- Officials whose status of authority is recognized are those who

Article 51.4 of the LOPDGDD indicates: "Officials who carry out activities of investigation will be considered agents of the authority in the exercise of its functions."

- The legal requirements referred to in article 77.5 of the LPACAP

are included in article 67 of the LOPDGDD, precept that regulates the previous investigation actions, whose section 1 has the following literal wording:

"Before the adoption of the agreement to start the procedure, and once admitted to processing the claim if any, the Spanish Agency for Data Protection may carry out preliminary investigation actions in order to achieve a better determination of the facts and circumstances that justify the processing of the procedure.", pointing out in section 2 of the aforementioned article that "The actions prior investigation will be subject to the provisions of Section 2 of Chapter I of Title VII of this organic law", section that regulates the personnel that can carry out such actions (article 51.4), the duty to collaborate (article 52) and the scope of research activity (article 53).

In the present case, the report of previous investigation actions, dated 24 January 2022, meets those requirements. In this report it is indicated, in relation to the claimed party, the following:

“On \*\*\*DATE.2, in procedure E/05479/XXXX the Spanish Agency of Data Protection agreed to carry out the present actions of investigation in relation to the alleged facts.

#### INVESTIGATED ENTITIES

Given the sensitivity of the facts denounced, during these proceedings this inspection carried out searches on the internet and social networks in order to locate

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possible additional sources to those reported by the complainant. As a result of

In this search, the following entities have been investigated:

20 MINUTES EDITORA, S.L. with NIF B99083966 with address at (...)

(...)

#### RESULT OF INVESTIGATION ACTIONS

During these proceedings, the publications indicated below were found.

continuation where the victim's voice could be heard without distortion. For all the responsible for the treatment was issued, dated \*\*\*DATE.4, precautionary measure of Urgent removal of content or distorted voice of the intervener in a manner that would be unidentifiable in the web addresses from which this was accessible content.

(...)

- 20 MINUTES EDITORA, S.L.

\*\*\*URL.1

With date of \*\*\* DATE.5 it is received in this Agency, with registration number 000007128e2100022495, letter sent by this entity informing that the content referenced in the precautionary measure had been replaced by a fixed image without voice the same day it was received.

What was stated was verified."

That is to say, that in said report of previous investigation actions, the facts verified by the official who carried out the investigation activity, therefore they enjoy a presumption of veracity.

For this purpose, let us recall the Supreme Court Judgment of February 25, 1998 (appeal 7107/1991) which states the following:

"FOURTH: The Jurisprudence of the Supreme Court attributes to the reports of the Agents of the Authority and administrative employees a principle of veracity and probative force when responding to a reality appreciated directly by the agents, all of this unless proven otherwise; (...)

FIFTH: However, it is necessary to clarify: a) The presumption of veracity indicated above must refer to those facts appreciated or verified materially by the intervening official as a result of his own personal observation or verification (material authenticity), not reaching deductions, appraisals, consequences, hypotheses or value judgments that may be made by said official, being of course excluded from the presumption of authenticity and veracity of the Act the mere opinions or subjective convictions of the agent. b) The legally established expression "unless proven otherwise" excludes that the content of the Act constitutes an appraised proof whose content is inexorably imposed,

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since its consequence is none other than to reverse the burden of proof of the facts included in the Minutes that are transferred to the administrator.” (underlining is our).

And it is that in the present case the claimed party has not destroyed the presumption of veracity of said act, since it has been accredited, through Archive.org, that the

The video was published by the defendant, a fact that was also admitted by the defendant in his writing of \*\*\*DATE.2 of XXXX, despite the fact that he now denies the veracity what is conveyed in this document.

II

On the other hand, the claimed party considers that the voice is not necessarily and in In any case, a personal data, and, therefore, its dissemination, if applicable, does not always involves data processing, invoking for this purpose Opinion 4/2007, of June 20, of the Article 29 Working Group.

In the first place, and without prejudice to its more detailed examination in the Fundamento of Law IV of this resolution, it must be indicated that the voice of any person is personal data and identifies it or makes it uniquely identifiable, regardless of the number of people who can recognize it.

Thus, the voice fits perfectly into the definition of what is a character data personnel of article 4.1) of the GDPR, verifying that the four components indicated in Opinion 4/2007 of the Article 29 Working Group on the concept of personal data: all information about a natural person identified or identifiable. The reference to all information refers to the concept

broad definition of what constitutes personal data, which requires a broad interpretation.

In the present case examined, the victim's voice identifies her directly in their environment (understood in a broad sense, encompassing the family and the social), that, as determined in the aforementioned Opinion 4/2007, "it can be consider a natural person "identified" when, within a group of persons, it is "distinguished" from all other members of the group. And there is a clear treatment if the voice has spread through the media claimed, under the terms of art. 4.2) of the GDPR.

And it is clear that the voice of any person can make it be identified at least by those who are part of the circle closest to the victim or may meet her anyway. Let's imagine relatives or co-workers or studies, social activities, etc. For this reason, the diffusion of the voice of the victim has assumed the certain risk that it could have been identified by persons who were unaware of their status as victims. Which is a particularly serious fact in an event like the one that gives rise to the news.

It is true that, sometimes, there are nuances that can make it difficult to identify a person by his voice, specifically when there are health problems that cause dysphonia to it, when the person consciously and voluntarily modifies their natural way of speaking (as is the case, for example, with imitations) and when

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distorts the voice through technical means. But none of the assumptions

occurs in the present case.

In addition, the voice also makes the victim indirectly identifiable to a larger segment of the population if combined with other data, even with additional information, depending on the context in question. Again the Opinion 4/2007 clarifies that "In cases where, at first sight, the identifiers available do not make it possible to single out a specific person, this person can still be "identifiable", because that information combined with other data (whether the responsible for their treatment is aware of them as if not) will allow distinguish that person from others.

Let us also bear in mind that, in the case examined, there is a easier to make the victim identifiable through his voice in response to the circumstances of the event and the context in which it is made public: within the framework of a highly publicized judicial procedure, continuously followed by various media that provide information about the victim, his environment, the violators, and the violation suffered (which makes up information additional).

In this sense, recital 26 of the GDPR determines that "...To determine if a natural person is identifiable, all means must be taken into account, such as the singularization, which can reasonably be used by the data controller or any other person to directly or indirectly identify the natural person.

To determine whether there is a reasonable probability that means will be used to identify a natural person, all objective factors must be taken into account, as well as the costs and time required for identification, taking into account both the technology available at the time of treatment such as advances technological..."

In this regard, the CJEU Judgment of October 19, 2016, in case C-582/14,

in the proceedings between Patrick Breyer and Bundesrepublik Deutschland, points out that

“41 The use by the Union legislator of the term “indirectly” shows that,

to qualify personal data information, it is not necessary that such information

allows, by itself, to identify the interested party.

42 In addition, recital 26 of Directive 95/46 states that, in order to determine whether

a person is identifiable, we must consider the set of means that

can be reasonably used by the data controller or by

any other person to identify such person.

43 Insofar as that recital refers to the means that

can be reasonably used both by the data controller and

by "any other person", its tenor suggests that, for a piece of data to be

classified as "personal data" within the meaning of Article 2(a) of that Directive,

it is not necessary that all the information that allows to identify the interested party must

be in the power of a single person.” (underlining is ours).

Let us remember once again that the purpose of the Fundamental Right to the Protection of

Personal Data is to protect people without ambiguity and without exception: such

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protection should not decline in this case due to the greater or lesser number of

people who can recognize the victim or subjective considerations about their

identifiability of the data controller, even more so in this case, given that it

that has taken place is the dissemination of a story by a victim of a rape

multiple.



On the other hand, and secondly, the defendant considers that the treatment of the voice by a means of communication in this case would be presenting the story of the victim in the exercise of freedom of information, but never for the identification of the affected subject.

As already stated in both the initiation agreement and the proposed resolution, It is not about denying the exercise of the Fundamental Right to Freedom of Information, nor to give precedence to one fundamental right over another, having to choose which has more weight in a specific case, but rather to find a balance between the two to achieve the achievement of the Fundamental Right to Freedom of Information without distorting the Fundamental Right to the Protection of Personal data.

That is, the freedom of information of the mass media is not questioned. communication but the weighting with the right to data protection based on the proportionality and need to publish the specific personal data of the voice, weighting, which in the present case, we are not aware of.

The situation could have been resolved by using technical procedures to prevent voice recognition, such as, for example, distortion of the voice of the victim or the transcript of the report of the multiple rape, security measures both applied, depending on the case, in an ordinary way by means of communication.

In fact, in the case examined, the claimed party has immediately withdrawn the recording of the hearing in which the voice of the victim was broadcast at the request of the AEPD, replacing it with a photo of the room where the declaration of the victim accompanying the written notice of said statement, so the Information continues to be available and continues to be supplied in full.

This shows that in order to provide this specific information it was not

necessary, under the terms of art. 5.1.c) of the GDPR to disseminate the voice of the victim.

Furthermore, we must mean that it is indifferent what the purpose of the

means of communication by publishing the video with the voice of the victim without distorting,

that according to the claimed party it is only to inform and not to seek his identification; because

the truth is that with the diffusion of such a voice the victim of the crime becomes identifiable.

multiple rape, a risk that should have been assessed by the media

and for which he is responsible.

Victims of sexual assaults, such as gang rape, have to face

the challenge of resuming his life once the trial is over, trying to overcome the

physical and psychological sequelae derived from the traumatic experience they have suffered.

In this sense, your environment plays a decisive role. Unfortunately, even today

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produce situations in which they are stigmatized despite having been the

victims, sometimes even being forced to change their place of residence.

For this reason, it is essential to treat with the greatest care any personal data that

allows you to reveal your identity, prevent you from being recognized as a victim in your environment,

understood in a broad sense. Here the medium plays a decisive role.

communication, since the analysis of risks for the rights and freedoms that

carried out prior to publication, and that in the present case we are not aware of,

It is the last guarantee that the victim has.

For all the foregoing, all the allegations made by the party are dismissed.

claimed to the initiation agreement and the proposed resolution.

IV.

The voice of a person, according to article 4.1 of the GDPR, is personal data

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

“Personal data”: any information about an identified natural person or

identifiable (“the data subject”); An identifiable natural person shall be considered any person

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

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

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

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

The voice is a personal and individual attribute of each physical 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, his way of being, his culture, his origin, his hormonal, emotional and

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

personal character considered together 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 personal data, as will be

any information that makes it possible to determine, directly or indirectly, your identity

(...)”

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

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

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

as

“any information concerning identified or identifiable natural persons”,

This question is not controversial.”

Article 4.2 of the GDPR defines "processing" 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,

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consultation, use, communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, deletion or destruction.”

The inclusion of a person's voice in journalistic publications, which identifies or makes a person identifiable, implies a processing of personal data and, therefore,

Therefore, the person responsible for the treatment that carries out the same is obliged to comply with the obligations for the data controller set forth in the GDPR and in the LOPDGDD.

V

This procedure is initiated because the claimed party published, on the website referred to in the facts, the audio of the statement before the judge of a victim of a multiple rape, to illustrate the news regarding the holding of the trial in a case that was very mediatic. The victim's voice was clearly appreciated when recounting with all the crudeness of details the multiple rape suffered. All this constitutes a processing of personal data of the victim.

People have the power of disposal over their personal data, including his voice, as well as its diffusion, resulting, without a doubt, deserving of protection of the person whose personal data is disclosed in violation of the law

legal.

Thus, Constitutional Court Judgment 292/2000, of November 30, provides that "the content of the fundamental right to data protection consists of a power of disposal and control over personal data that empowers the person to decide which of these data to provide to a third party, be it the State or a individual, or which this third party may collect, and which also allows the individual 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, that constitute part of the content of the fundamental right to data protection are legally specified in the power to consent to the collection, obtaining and use of 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 the knowledge and treatment, computerized or not, of personal data, requires as essential complements, on the one hand, the ability to know everything moment who has these personal data and to what use is submitting them, and, on the other hand, the power to oppose that possession and uses".

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

"1. Personal data will be

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

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However, we are faced with a fundamental right that is not absolute, since, if necessary, the Fundamental Right to Data Protection can give in to the prevalence of other rights and freedoms also constitutionally recognized and protected, such as, for example, the Fundamental Right to Freedom of Information, weighing it on a case-by-case basis.

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 public interest in information 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. By pondering the conflicting interests and, considering the concurrent circumstances of this case, that is, the especially sensitive nature of personal data and the intense affectation of 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 in front of the claimed public interest in its dissemination.

SAW

In the struggle between the Fundamental Rights to Freedom of Information in relation to the Fundamental Right to the Protection of Personal Data, even when an equal degree of protection is recognized for both constitutional rights, ordinarily the first is usually endowed with prevalence by our courts, after assess and weigh all the elements at stake.

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

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

normatively and jurisprudentially.

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

concept of legitimate interest of the data controller under the

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

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

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

cases in which the question of legitimate interest may arise, stating 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".

VII

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

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

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

the Image itself.

Thus, we will cite, for all, the Judgment of the Constitutional Court 27/2020, of 24

February (recurso de amparo 1369-2017) that disposes, in relation to the image of a

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person, and based on the incontrovertible fact that makes it identifiable, that "...the

debated issue is reduced to ponder whether the non-consensual reproduction of the image

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

suddenly and involuntarily acquires a role in the newsworthy event, in this case as a victim of the failed assassination attempt by his brother and the subsequent his suicide, supposed an illegitimate interference in his fundamental right to own image (art. 18.1 CE).

[...]

...that criminal events are newsworthy events, even with regardless 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 be transmitted (SSTC 20/1992, of February 20; 219/1992, of December; 232/1993, of July 12; 52/2002, of February 25; 121/2002, of 20 May, and 127/2003, of June 30). Thus, it is currently recognized by Law 4/2015, of 27 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 his condition can generate, all this regardless of their procedural situation. Therefore, the present Statute, in line with European regulations on the matter and with the demands that raises our society, claims, based on the recognition of the dignity of 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 victim of the crime against information freedoms, since graphic information became idle or superfluous because the photograph of the victim lacks real interest for the transmission of the information, in this case the apparent accomplishment of a homicide and subsequent



suicide” (emphasis added).

We will add the Judgment of the Supreme Court, of its First Civil Chamber, 272/2011, of April 11 (rec. 1747/2008), in which, regarding the necessary data to provide information and limits to the public interest states that "b) The trivial information is not protected (ATC 75/2006), but the fact of providing data is not necessary in a rape case (full name, last initials, the portal of the street where the victim lived) that have no community relevance, do not they respect the reserve, they only seek to satisfy curiosity, they produce disturbances or inconvenience and unnecessarily reveal aspects of personal and private life, allowing neighbors, close people and relatives to fully identify the victim and knowledge in great detail of a seriously injurious act against their dignity (STC 185/2002) or about a disease that has no interest public and directly affects the irreducible sphere of privacy and that is reveals the effect of a pure joke or joke (STC 232/1993);”.

Likewise, the Judgment of the Supreme Court, of its First Civil Chamber, Judgment 661/2016, of November 10 (rec. 3318/2014), in relation to the capture and dissemination in court of the image of a victim of gender violence

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provided that "1st) The interest of the questioned information is not discussed nor the right of the television channel sued to broadcast images recorded during the act of oral trial of the criminal case, since there is no limitation in this regard agreed by the judicial body.

2nd) The only controversial point is, therefore, whether the applicant's identification as a victim of the crimes prosecuted in said criminal case, through first shots of his face and the mention of his first name and place of residence, he was also included in the fundamental right of the television channel demanded to transmit truthful information or, on the contrary, was limited by the fundamental rights of the plaintiff to her personal privacy and to her 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 July), which are accentuated in cases of physical and psychological abuse (judgments 128/2011, of March 1, and 547/2011, of July 20), but it 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 allow a complete identification, and not only by its initials, due to the nature and social significance of the crimes of mistreatment (judgment 547/2011, of July 20).

[...]

6th) In short, the defendant television channel should have acted with the prudence of the diligent professional and avoid issuing images that represented the recurring in close-up, either refraining from issuing the corresponding shots, well using technical procedures to blur their features and prevent their recognition (judgment 311/2013, of May 8). Similarly, it should also avoid mentioning your first name, because this information, insufficient by itself to constitute illegitimate interference, became relevant when pronounced on the screen simultaneously with the image of the applicant and add the mention of her town of residence, data all of them unnecessary for the essence of the content

information, as evidenced by the news about the same trial published in the next day in other media. 7th) The identification of the plaintiff through his image and personal data indicated and its direct link to an episode of gender 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, supposes that the loss of the anonymity would violate both the plaintiff's right to her own image, by the broadcast of their physical features, such as their personal and family intimacy, to the extent that that some reserved data, belonging to his private life (who went to the Internet to start a relationship or the intimate content of some of their talks), lacking offensive entity in a situation of anonymity, they began to have it from the moment in which any person who watched those news programs and who resided in the location of the victim could know who they were referring to, so that the damage psychological damage inherent to his condition as a victim of crimes was added to the moral damage consisting of the disclosure of information about his private life that he had not consented to make public." (underlining is ours).

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As we can see, a clear reference is made to the excessive treatment of personal data (some of which are not of an intimate nature) to provide the information, considering them unnecessary at all points in attention to the concurrent circumstances. Sometimes the courts refer to intimate data, but sometimes it is personal data that is not intimate, such as, for

For example, the image of a natural person obtained from a photograph published in a social network or name and surname.

## VIII

In the specific case examined, as we have indicated, the claimed party published, on the website referred to in the facts, the audio of the statement before the judge of a victim of a multiple rape, to illustrate the news of a very media.

Thus, it is not a question, as in other cases examined by jurisprudence, of endowing of prevalence to a fundamental right over another, having to choose which one has more weight in a specific case. If not, rather, to find a balance between both to achieve the achievement of the purpose of the first without undermining the second.

The reconciliation of both rights is nothing new, since the legislator European Union mandates such reconciliation in article 85 of the GDPR.

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

We must consider the special circumstances present in the supposed examined. It is about a XXXXX woman who has suffered a multiple rape. In the published recording, she is heard recounting, with great emotional charge, the sexual assault suffered in all crudeness, narrating (...). In addition, we cannot lose sight of the victim status 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 crime, as well as the recent Organic Law 10/2022, of 6 of September, of integral guarantee of sexual freedom, foresee a special need to protect victims of crimes against sexual freedom or sexual indemnity. In addition, the aforementioned Statute of the victim of crime it also provides special protection for victims of violent crimes. and in the case examined both circumstances concur.

In this case, the situation of the victim must be considered (who is not in the same level of equality as the defendants) and what the diffusion of their voice with all its nuances, as well as the special protection that the

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legal system that, without constraining the supply of information, must be done compatible with the principle of data minimization, applicable to the form, the medium in which the information is supplied and disseminated due to the immediate affectation of the data personnel and the identification of the victim.

Precisely because the obvious informative public interest in the news is not denied, Given the general interest in criminal cases, in this specific case, it is not a question of to diminish 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 resolved with the use of technical procedures to prevent voice recognition, such as, for example, distortion of the voice of the victim or the transcript of the report 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, for all STC 58/2018, of June 4, affirms that the public authorities, public officials and public figures or those dedicated to activities that carry public notoriety "voluntarily accept the risk of that their subjective personality rights are affected by criticism, opinions or adverse disclosures and, therefore, the right to information reaches, in relation to with them, its maximum level of legitimizing effectiveness, 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 granting general importance to facts or behaviors that would have it if they were referred to to public figures".

The Judgment of the Court of Justice of the European Union (Second Chamber) of 14 February 2019, in case C 345/17, Sergejs Buivids refers to various Criteria to balance between the right to respect for privacy and the right to freedom of expression, among which are "the contribution to a debate of general interest, the notoriety of the affected person, the object of the report, the previous behavior of the data subject, the content, form and repercussions of the publication, the manner and circumstances in which information was obtained and its

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

Satakunnan Markkinapörssi

Finland,

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

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In such a way that for a matter to be considered of general interest, public relevance, they will be not only for the person who intervenes, but also for the matter to which it refers. Both requirements must concur, resulting, at greater abundance of what was meant in the previous section, that in the case examined the victim is not a public person; rather the contrary, it is of great interest that is recognized by third parties, so it may entail a new penalty

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to the already suffered The victim is an anonymous person and must remain so, in such a way that so that their fundamental rights are fully guaranteed.

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

For this reason, and as expressed by the Supreme Court in its (civil) judgment 697/2019, of 19

December, the formation of a free public opinion does not require, nor does it justify, the

affects the fundamental right to one's own image (in this case, the protection of personal data) with that seriousness and in a way that does not save 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 persons, signed by the entities involved, which establishes that "The signatories of the Charter will refrain from identifying the victims in any way.

of assaults, acts of violence or sexual content in their information or publish information from which, in general, your identity can be inferred in the case of people of no public relevance. All this without prejudice to the fact that the non-public persons may be involved in newsworthy events, in which case the informative coverage will be the necessary one to give adequate fulfillment to the right information, taking into account the peculiarities of each case".

## IX

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

Such obligations do not decline because we are before a data controller that it is a means of communication.

If we add the diffusion of the victim's voice (with all its nuances), which makes it identifiable and can be recognized by third parties, with the factual account that makes in relation to the violation suffered, there is a very high and very likely risk that may suffer damage to their rights and freedoms. This has happened in other cases of dissemination of personal data of victims of rape crimes. And this, in addition to



that with the diffusion of the voice of the victim she is being sentenced again to  
can be recognized by third parties, when it is not a proportional treatment or  
necessary in relation to the information purposes pursued.

It is tremendously significant that, in the case examined, the part

The defendant has immediately withdrawn the recording of the hearing in which the  
voice of the victim at the request of the AEPD, without prejudice to which the information

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it is still available and is still supplied in its full range. This puts  
manifest that in order to provide this specific information it was not necessary, in the  
terms of art. 5.1.c) of the GDPR to disseminate the voice of the victim.

X

The claimed party has processed data that was excessive as it was not necessary for the  
purpose for which they were processed, which constitutes an infringement of article  
5.1.c) of the GDPR.

The infringement attributed to the claimed party is typified in article  
83.5, section a) of the GDPR, which under the heading "General conditions for the  
imposition of administrative fines" provides that:

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

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

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute offenses the acts and behaviors referred to in sections 4, 5 and 6 of 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, are considered very serious and will prescribe after three years the infractions that a substantial violation of the articles mentioned therein and, in particular, the following:

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

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In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the GDPR, precepts that state:

"Each control authority will guarantee that the imposition of administrative fines under this Article for infringements of this Regulation indicated in sections 4, 5 and 6 are effective in each individual case, proportionate and dissuasive."

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

individual case, in addition to or in lieu of the measures contemplated in

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

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

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

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

number of interested parties affected and the level of damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the person in charge or in charge of the treatment to

settle 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, habi-

gives an account of the technical or organizational measures that have been applied by virtue of the

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 whether the person in charge or the person in charge notified the infringement and, if so, in 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 to 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 GDPR, the LOPDGDD, article 76,

"Sanctions and corrective measures", provides:

"2. 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 data processing.

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personal information.

- 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 offence.
- e) The existence of a merger by absorption process subsequent to the commission of the violation, which 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 controversies between those and any interested party.”

In this case, the following graduation criteria are considered concurrent:

☐ Aggravating:

- Article 83.2.a) of the GDPR:

Nature, seriousness and duration of the infringement: It is considered that the nature of the infraction is very serious since it entails a loss of disposition and control over the personal data of your voice to a person who has been the victim of a violent crime and against sexual integrity and that by disseminating said personal data there was a certain risk that it could be recognized by third parties, with the serious damages that this it would cause

- Article 83.2.b) of the GDPR.

Intentional or negligent infringement: Although the Agency considers that it is not there was intentionality on the part of the communication medium, the Agency concludes that was negligent in not ensuring a procedure that guaranteed the protection of the personal data in such sensitive circumstances, especially when in many Sometimes the voice in the news is distorted so that it is not recognized to the person speaking.

- Article 83.2.g) of the GDPR.

Categories of personal data affected by the infringement: The certain possibility of recognize the victim of a crime as the one reporting the news, very serious, violent and against sexual integrity (multiple rape), is seriously detrimental to the affected, since what happened is linked to their sexual life.

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The text of the resolution establishes the offense committed and the

facts that have given rise to the violation of data protection regulations, of which clearly infers what are the measures to adopt, notwithstanding that the type of procedures, mechanisms or concrete instruments to implement them corresponds to the sanctioned party, since it is the person responsible for the treatment who He fully knows his organization and has to decide, based on the responsibility proactive and risk approach, how to comply with the GDPR and the LOPDGDD.

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 20 MINUTOS EDITORA, S.L., with NIF B99083966, for a infringement of article 5.1.c) of the GDPR, typified in article 83.5 of the GDPR, a a fine of 50,000.00 euros (FIFTY THOUSAND euros).

SECOND: Confirm the following provisional measures imposed at 20 MINUTES EDITOR, S.L.:

- Withdrawal or distortion of the victim's voice from their web addresses, avoiding, in the to the extent that the state of technology allows it, the re-uploading or re-uploading of copies or exact replicas by the same or other users.
- Withdrawal or modification of the contents in such a way that it makes it impossible to access them and disposition of the original by third parties, but guarantees its preservation, for the purposes of guard the evidence that may be necessary in the course of the investigation police or administrative or judicial process that may be investigated.

THIRD: NOTIFY this resolution to 20 MINUTES EDITORA, S.L..

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.

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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

938-120722

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