

□ Procedure No.: PS/00470/2021

RESOLUTION OF PUNISHMENT PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency before the GENERAL DIRECTORATE OF THE POLICE, (hereinafter, "the party claimed"), in by virtue of the three claims filed by: A.A.A., (claimant 1); B.B.B., (claimant 2) and C.C.C., (claimant 3); (hereinafter, "the claimants"), for alleged infringement of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding the Protection of Natural Persons in what regarding the Processing of Personal Data and the Free Circulation of these Data (RGPD) and Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights, (LOPDGDD), and based on:

FACTS

FIRST: On 04/16/21, they had entry in this Agency, three writings identical claims of three people, in which it was indicated, among others, what

Next:

"Last 03/20/21, the demonstration that ran through the center of Madrid passed without incident. I did not witness any act of disobedience, disorder public or violence by any person during its entire journey.

Around 6:50 p.m. at Atocha station, several agents approached me and they asked me to go with them to one of the columns of the station, to the asking them why they only answered me that they show them my documentation, they don't They gave no further explanation. Once in the column they took my ID and They searched by spreading my legs and making me face the wall. After a while I They returned my ID and allowed me to leave. I decided to leave the demonstration heading from the Paseo del Prado to the Paseo de la Infanta Isabel, where several

agents prevented me from leaving, informing me that in order to leave the concentration

I had to go to the end of Calle Claudio Moyano. When I got there, other agents

They blocked the passage again, one of them informed me that he could only do so if I showed them

my documentation again and photographed him, asking the reason the only

The answer was to do it or I couldn't get out. I accepted, gave the agent my

document, photographed it with a phone and gave it back to me and I left. Even though it

verbally required, at no time was I informed of the reason why I was

I was identifying. There are different videos on the internet of how the

identifications by taking photographs of the DNI.

At no time did they inform me if the cell phones belonged to the Ministry of

Interior, of the National Police Corps or if, on the contrary, they were the property of the police.

In the event that the mobiles were for the personal use of the police, it would be

violating the provisions of the data protection legislation.

SECOND: On 05/13/21, this Agency sent a letter of

request for information on the aspects indicated in the claim, to the D.G. of the

Police, in accordance with the provisions of article 65.4 of the LOPDGDD Law.

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THIRD: On 06/11/21, the D.G. of the Police sends to this Agency a letter of

answer, in which, among others, it indicates the following:

“On March 20 of this year, a police device was established in the Plaza

of Carlos V and surroundings in compliance with the Order of Service established to

these effects, on the occasion of a demonstration not communicated to the Delegation of the

Government of Madrid. Because the demonstration had not been communicated to the Delegation of the Government of Madrid, and in order to avoid incidents similar to those occurred previously, we proceeded to identify the people who

They came to the place to be part of it.

The aforementioned identifications were made by photographing the documents of identity with an official mobile phone belonging to the Head of the Nucleus of the Unit acting, complying for these purposes with the provisions of LO 4/2015 on Protection of Citizen Security.

Once the identification was made, the images of the DNI taken were immediately deleted from the mobile device, without being used at that time nor in a later one, for a purpose other than the one that motivated the police action or to be necessary for any subsequent diligence. Taking pictures is a way of exceptional procedure in certain circumstances at the time of Pandemic in the that the agents comply with all possible precautions in order to avoid a risk to the Health.

The aforementioned action has been endorsed by the Deputy Directorate of Operations at the understand that there has been no treatment of the photograph taken and that this proceeding has been exceptional and motivated by their own precautions aimed at limiting to the maximum any risk to the health of the acting officials. This form of action was considered opportune, having assessed the circumstances and the situation of Existing pandemic in order to avoid direct contact with identified people and with the belongings of this, which redounds in benefit of the protection of the health of the interveners, all this trying to carry it out in the most aseptic way possible. The sole purpose of taking an image of the identity document, given the circumstances in which the identification was made was to avoid the manipulation of east, and maintain the safety distance recommended by the Authorities

sanitary.

FOURTH: On 09/17/21, by the Director of the Spanish Agency for

Data Protection agreement is issued for the admission of claims processing

presented, in accordance with article 65 of the LPDGDD Law, having appreciated

possible rational indications of a violation of the rules in the field of

powers of the Spanish Data Protection Agency.

FIFTH: On 11/19/21, by the Board of Directors of the Spanish Agency for

Data Protection, a sanctioning procedure is initiated against the General Directorate of the

Police, upon appreciating reasonable indications of violation of the RGPD, for the alleged

infringement of article 5.1.c) of the RGPD, considering that, with the realization of a

photograph of the DNI to the person who was being identified, a treatment

excessive use of personal data in relation to the purpose for which they were being

collecting.

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SIXTH: Once the initial agreement has been notified to the General Directorate of the Police, it

By means of a document dated 11/30/21, it formulated, in summary, the following allegations:

“FIRST.- On March 20, 2021, a police device was established in the Plaza

of Carlos V of the town of Madrid and surroundings, on the occasion of a

manifestation not communicated to the Delegation of the Government of Madrid, whose purpose

sought to avoid incidents similar to those that have occurred recently,

proceeding to the identification of the people who accessed the place to form

part of this.

As for the details of the context in which such identifications were developed,

contained in the report of the demonstration prepared by the 1st Unit of

Police Intervention, in which the following points are detailed:

- The act consisted of a demonstration not communicated to the Government Delegation, failing to comply with the requirements of article 21 of the Spanish Constitution. The prior communication does not pursue anything other than the knowledge of the competent authority to determine the necessary security measures in this type of events, in order to encourage the exercise of this right, is developed with the maximum guarantees of security and respect for the rights and freedoms, both of the demonstrators, and of the rest of the users of the roads along which that runs the same, in such a way that the absence of this requirement makes difficult the organization of its security device.
- The attendance of an approximate number of 600 participants was computed.
- Conveners: groups of the extreme left, anti-fascists and anarchists, among others.
- During the act the following phrases were chanted: "Madrid will be the tomb of the fascism", "free political prisoners", "police out of the neighborhoods of Madrid", "Police assassin", among others. - Members of the security device: UIP units, UPR, Mobile Brigade, Air Media...

In this context, considering the high risk of producing altercations during the

manifestation, which could be typified by Organic Law 10/1995, of 23

November, of the Penal Code as crimes of damages, crimes of public disorder or

crimes committed on the occasion of the exercise of fundamental rights and

public liberties guaranteed by the Constitution, given the characteristics previously

reported, as well as the risk of attack against the agents of the authority, in view

of the verbal manifestations of the attendees, all this coupled with the risk of contagion

by the Covid-19 virus, which multiplies in these massive acts, the Head of the Device is the one who decides about the use of security measures that are more appropriate to the circumstances.

In the case at hand, the atmosphere of intimidation against members of the Security Forces and Bodies, together with the other concurrent circumstances, They advised taking extreme precautions and speeding up interventions as much as possible. with the demonstrators, which is why this means of identification was chosen, which

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as has already been said, it is an exceptional means, and it was used with due guarantees security in data processing.

SECOND.- During this security device, they were identified several people, including the claimants.

These identifications were made by photographing the identity documents with a official mobile phone, exceptional practice in the exercise of this type of diligence, opting for it following the indications of the health authorities regarding the maintenance of personal distance, and trying in this way to limit the maximum the time of contact with the identified people while maintaining the adequate separation during the relevant police checks regarding the document, in order to protect the health of both the officials involved and the the persons to be identified. The images captured in this way were immediately deleted from the corporate device once the identity is verified of individuals, without leaving any trace of them, not even in the same

terminal or in any other file, mass storage device of

digital information or telematic data repository.

3 It is worth noting that the mobile phone with which the photographs were taken was a official mobile phone, whose use is only authorized for questions related to police activity, this device is always under custody of the Head of the Nucleus of the acting Unit and equipped with security measures specific.

THIRD.- Regarding these facts, the individuals mentioned above filed claim before the AEPD, which on 05/13/21 required the General Directorate of the Police, for the referral of the report, which was evacuated on 06/11/21.

Having seen the aforementioned report, the Director of the Spanish Agency for Data Protection (hereinafter, AEPD), issued an Agreement for the Admission of Claims presented, in accordance with article 65 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter, LPDGD), having appreciated possible rational indications of a Violation of the rules in the field of competence of the AEPD.

Next, the Data Inspection of this AEPD, considering that the processing of personal data carried out by the General Directorate of the Police does not complied with the conditions imposed by current legislation on the protection of data, proceeded to open this file.

FOURTH.- This Unit does not share the criteria of the AEPD, since the same contains an erroneous assessment, both with respect to the circumstances relating to the practice of identifications, as well as in terms of the legal foundation applied to the processing of personal data, which is why it is considered the inadmissibility of the proposed sanction and an appeal is made to file this procedure, all of which is based on the following legal foundations:

I.- Regarding the identification diligence. The aforementioned Agreement carries out an analysis of

Organic Law 4/2015 of March 30, on the protection of citizen security (in

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forward, LOPSC), referring, firstly, to the preamble where it is indicated

that "...the competent authorities are empowered to agree on different actions

aimed at maintaining and, where appropriate, restoring tranquility

citizen in cases of public insecurity, precisely regulating the

budgets, purposes and requirements to carry out these procedures, in accordance with

the principles, among others, of proportionality, minimal interference and

discrimination...".

Reference is also made to articles 9, on the obligations and rights of the

holder of the National Identity Document and to article 16.1, which specifies

the assumptions in which the Security Forces and Bodies may require the

identification of the persons ("When there are indications that they may have participated

in the commission of an infraction, when it is necessary to prevent a crime..."),

and allusion is made to the strict respect for the principles of proportionality, equality of

treatment and non-discrimination on the grounds of birth, nationality, racial or ethnic origin,

gender, religion or belief, age, disability, sexual orientation or identity, opinion

or any other personal or social condition or circumstance, which must necessarily

govern the practice of identification diligence.

Needless to say, the police action was carried out with absolute respect for the principles

contained in article 16.1 LOPSC (proportionality, equal treatment and

discrimination), extremes that the complainants have not questioned, focusing the complaint of citizens only in the medium used for the practice of the ID. Specifically, the complainants affirm that "at no time reported whether the cell phones belonged to the Ministry of the Interior, the National Corps of Police or if on the contrary they were property of the police, in the case they denounce that, "It would be violating the provisions of data protection legislation."

In this regard, it should be noted that there is no obligation in current regulations express right to inform officials about the ownership of the material used in police services and it is not usual for the legality of the interventions of the agents before the unfounded belief of the use of means of particular ownership, since among the means and instruments of police endowment find mobile phones, tablets, PDAs and other devices electronics provided with the necessary guarantees.

Indeed, the use of electronic devices is becoming more and more common in different police services and its purpose is to streamline police actions, optimizing available resources without undermining citizen guarantees and reducing intervention times, which results in quality standards of the police service and the safety of the officers themselves.

Article 16.2 LOPSC does contemplate the use of any means available to the agents that favor the act of identification. Article 16.2 LOPSC.- When not identification was possible by any means, including telematics or telephone, or if the person refused to identify himself, the agents, to prevent the commission of a crime or for the purpose of sanctioning an infraction, they may require who could not be identified to accompany them to the dependencies nearest police (...).

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Based on this authorization, the officials who carried out these procedures, used the means available to them, especially considering the circumstances exceptions in the context of the international pandemic caused by the coronavirus SARS-CoV-2, in order to practice identification with a medium that facilitated the intervention by minimizing interpersonal contact, as has been said previously, following the indications of the health authorities in this regard and with scrupulous respect for data protection regulations in what refers to the processing of this personal data because, as already indicated, once the necessary checks, the images were deleted without the same no trace will remain in any police file.

It can be affirmed, therefore, that the police action of crime prevention and maintenance of public order was specifically accommodated to the basic principles of action established in article 5 of Organic Law 2/1986, of March 13, of Security Forces and Bodies, as well as the provisions of the LOPSC itself.

II.- Applicable regulations regarding the protection of personal data.

The act that gives rise to this procedure consists of the proceedings of identification that were made during the demonstrations in the town Madrid, on March 20, 2021.

The identification diligence, as can be deduced from the aforementioned articles of the LOPSC, is part of the activity that, in terms of prevention of criminal and administrative offenses are carried out by the Security Forces and Bodies.

It should be noted again that many unreported manifestations, such as the

that is the object of analysis that was already preceded by others that had episodes violent, are usually taken advantage of by individuals or groups who, protected by the multitude carry out criminal acts that must be prevented by the Forces and Security Forces to guarantee citizen security and the free development of fundamental rights and public freedoms of other citizens.

Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, alleged by the AEPD to initiate the procedure sanctioning, expressly excludes from its scope of application to this matter, determining in article 2.2 of the same: Article 2 LPDGDD.- 2. This organic law will not apply: 6 a) To treatments excluded from the scope of application of the General data protection regulation by its article 2.2, without prejudice to the provided in sections 3 and 4 of this article.

In this sense, article 2.2.d) of Regulation (EU) 2016/679, of the Parliament European and Council, of April 27, 2016, regarding the protection of natural persons with regard to the processing of personal data and the free circulation of these data, regulates the material scope of the same, and excludes the processing of personal data carried out by the authorities authorities for the purposes of prevention, investigation, detection or prosecution of criminal offenses, or the execution of criminal sanctions, including protection against threats to public safety and their prevention.

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For all of the above, the references that in the Agreement to Start the Procedure

Sanctioning are made to this Organic Law 3/2018, of December 5, are unfounded and devoid of any basis and legal basis, to the extent that the matter on which it deals is expressly excluded from its scope of app.

In this way, the processing of personal data by the authorities competent for purposes of prevention, investigation, detection or prosecution of criminal offenses or execution of criminal sanctions, at the time of the facts that give rise to this sanctioning procedure, continued to be object of regulation by articles 23 and 24 of LO 15/1999, of December 13, Protection of Personal Data, by virtue of the provisions of the Additional provision 14 LPDGDD ("Rules issued in development of article 13 of Directive 95/46/CE.

The rules issued in application of article 13 of Directive 95/46/EC of the European Parliament and of the Council, of October 24, 1995, on the protection of natural persons with regard to the processing of personal data and the free circulation of these data, which would have entered into force prior to 25 of May 2018, and in particular articles 23 and 24 of Organic Law 15/1999, of December 13, Protection of Personal Data, are still in force in as long as they are not expressly modified, replaced or repealed") and the Provision Transitory 4 LPDGDD ("Processing subject to Directive (EU) 2016/680. The treatments subject to Directive (EU) 2016/680 of the European Parliament and of the Council, of April 27, 2016, on the protection of natural persons in relation to regarding the processing of personal data by the authorities competent for purposes of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, and the free circulation of such data and repealing Council Framework Decision 2008/977/JHA,

will continue to be governed by Organic Law 15/1999, of December 13, and in 7 particularly article 22, and its development provisions, as long as the law does not enter into force. rule that transposes the provisions of the aforementioned directive into Spanish Law”).

Organic Law 15/1999, of December 13, contained a brief regulation regarding the protection of personal data processed for purposes of prevention or investigation of criminal offenses, which was limited to articles 23 and 24 of the itself and that in no way limited operational actions such as the one analyzed, even recognizing certain exceptions to the general regulations on Data Protection. Article 23. Exceptions to the rights of access, rectification and cancellation. LO 15/99.- 1. Those responsible for the files containing the data to referred to in sections 2, 3 and 4 of the previous article may deny access, rectification or cancellation based on the dangers that could arise for the defense of the State or public security, the protection of rights and freedoms of third parties or the needs of the investigations that are being carried out. (...) Article 24. Other exceptions to the rights of those affected. LO 15/99.- 1. The The provisions of sections 1 and 2 of article 5 shall not apply to the collection of data when the information to the affected prevents or seriously hinders compliance with the control and verification functions of the Administrations or when it affects the National Defense, public security or the prosecution of criminal offenses or administrative.

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On the other hand, regarding the use of video cameras by the Armed Forces and

Security is concerned, the regulatory framework was given by Organic Law 4/1997, of August 4, which regulates the use of video cameras by the Forces and Security Forces in public places, which, however, did not refer in its articulated no limitation or required any authorization regarding the use of Photo cameras. III.- Regarding the merits of the matter: Notwithstanding the foregoing, that would prevent the application of the LPDGDD for exceeding its scope of application, the Agreement to initiate this sanctioning procedure, in its point IV, analyzes the alleged excessive processing of personal data of the protesters, and refers to an alleged violation of the provisions of article 5 LPDGDD, in which section 1.c) specifies that "the processing of personal data must be appropriate, relevant and limited to what is necessary in relation to the purposes for which they are treated", known as the principle of data minimization. Thus, it is valued need for treatment, and it is concluded that the fact that police officers take photographs of the DNI of the people who accessed the place to form part of it (...) in order to, (...) avoid incidents similar to those that occurred with previously (...), it could have involved 8 excessive processing of the data personal, contrary to the principle of data minimization (art. 5.1 c), considering that the situation existing at that time made it possible to carry out a collection less invasive data, which does not contradict the indicated principle, provided respecting, of course, the health security of the agents regarding the situation of pandemic that was suffered."

The aforementioned criterion is not shared by this Unit, since it is indisputable that the collection of the data by means of the method habitually used, consisting of the exhibition of the document by its holder to the agent and the consequent copy of the data by the latter, necessarily requires a temporary space of close contact greater than the time required to take the photograph

to the document. Therefore, if what is sought by the agents is the minimization of times of interpersonal contact, as well as avoiding the manipulation of documents for health security measures, it is necessary to resort to the resources available to facilitate this task.

In other words, a less invasive data collection was possible, but this possibility would be detrimental to the safety of agents and individuals, by extend the time of interpersonal contact, and in the case of agents, this The increase in risk rises exponentially in massive acts such as the one that caused the identifications that are now being evaluated, without prejudice to the fact that against his will and in compliance with their obligations, may also act as vectors of contagion with respect to third parties.

Therefore, having accredited the need and suitability of the means used for the purposes of reduce interpersonal contact times, and maintain the social distance that health authorities had been demanding, it can be affirmed that the intervention of the police consisting of the identification of these three individuals was subjected scrupulously to the principle of data minimization.

IV.- Qualification of the infraction: Finally, and with regard to the qualification of the facts, the Data Inspection of the AEPD, incardinales the same in the very lack

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serious, typified in article 72.1.a) LOPDGDD, which includes the consistent infringement in: a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679. A behavior similar to

above is also typified by Organic Law 7/2021, of May 26, of protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offences. Specifically, his article 58.a), typifies the very serious offense consisting of "the processing of personal data that violates the 9 principles and guarantees established in article 6 or without concurrence any of the conditions of legality of the treatment established in article 11, provided that damages of a very serious nature are caused to the interested parties".

In any case, this conduct would not coincide with the facts prosecuted, as as soon as the identification procedures carried out by the agents were solely oriented to the prevention of acts typified as a crime in view of facts with similar antecedents and causes, being, on the contrary, actions police operations covered by the LOPSC and executed based on the principle of proportionality, suitability and minimal intervention, given that they only intended guarantee citizen security and prevent the consummation of criminal acts through prevention. In any case, none of the normative bodies referred to would be applicable to the case analyzed, as has been stated previously: one for being excluded from its scope of application and the second, for its lack of validity and absence of serious damage caused to any of the those affected required by the standard.

PROVEN FACTS:

1º.- According to the claimants, when they tried to leave the demonstration in which were participating, a police control that was in one of the streets adjacent to the demonstration required them to identify themselves. when they showed them the DNI, one of the agents took a photograph of the document and returned it to him.

2º.- In the written claims presented, it is indicated that, "at no time will reported whether the cell phones belonged to the Ministry of the Interior, the National Corps

of Police or if on the contrary they were property of the police”, in the case they denounce that,

"It would be violating the provisions of the legislation on data protection."

3º.- For its part, the General Directorate of the Police indicates, in its letter of

response to this Agency, dated 06/11/21, indicated, among others, the following:

- That due to the fact that the demonstration had not been communicated to the Delegation of the Government of Madrid, and in order to avoid incidents similar to those that occurred previously, we proceeded to identify the people who accessed to the place to be part of it.

- That the identifications were made by photographing the DNI with a telephone official cell phone belonging to the Head of the Nucleus of the acting Unit.

- That, once the identification was made, the images of the DNI taken were immediately deleted from the mobile device, without being used in that

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time or at a later time, for a purpose other than the one that motivated the action police or be necessary for any further proceedings.

- That taking photographs is an exceptional way of proceeding in certain circumstances in times of pandemic in which agents take all possible precautions in order to avoid a health risk.

- That the police action has been endorsed by the Deputy Directorate of Operations at the understand that there has been no treatment of the photograph taken and that this procedure has been exceptional and motivated by the own precautions aimed at minimizing any risk to the health of officials

acting.

4º.- Initiated the sanctioning procedure, within the period of allegations, The

The General Directorate of the Police affirmed, in its pleadings brief, among others, that

Next:

- That the act consisted of a demonstration not communicated to the Delegation of the

Government, failing to comply with the requirements of article 21 of the Constitution

Spanish.

- That the attendance of an approximate number of 600 people was computed, of

groups of the extreme left, anti-fascists and anarchists, among others.

- That during the act the following phrases were chanted: "Madrid will be the tomb

of fascism", "free political prisoners", "police out of the neighborhoods of

Madrid", "Police killer", among others. - Members of the device

security: UIP units, UPR, Mobile Brigade, Air Resources...

- That, in this context, the high risk of producing altercations was assessed

during the demonstration, which could be typified by the Penal Code

such as crimes of damage, crimes of public disorder or crimes committed with

opportunity to exercise fundamental rights and freedoms

guaranteed by the Constitution, given the characteristics previously

reported,

- That, as well as the risk of attack against the agents of the authority, at the

view of the verbal manifestations of the attendees, all this together with the

risk of contagion by the Covid-19 virus, which multiplies in these acts

crowded, the Head of the Device is the one who decides about the use

security measures that are most appropriate to the circumstances.

- That, in the case at hand, the atmosphere of intimidation against

members of the Security Forces and Bodies, together with the other

concurrent circumstances, advised taking extreme precautions and expediting interventions with the demonstrators as much as possible, which is why opted for this means of identification, it is an exceptional means, and it was used with due security guarantees in data processing.

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- That the officials who carried out these proceedings used the means available at your fingertips, especially taking into account the circumstances exceptional circumstances of the international pandemic context motivated by the coronavirus SARS-CoV-2, in order to practice identification with a that facilitated the intervention by minimizing interpersonal contact, which as stated above, following the instructions of the authorities in this regard and with scrupulous respect for the regulations of data protection with regard to the processing of these data personal.

- That the identifications were made by photographing the identification documents identity with an official mobile phone belonging to the Head of the Nucleus of the acting unit.

- That, once the necessary checks were made, the images were deleted without leaving any trace of them in any file police.

FOUNDATIONS OF LAW

I.- Competition:

The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD in the art. 47 of LOPDGDD.

II- On the alleged excessive processing of personal data of the protesters.

Article 5 of the RGPD establishes the principles related to the treatment of personal data.

personal data by the person in charge and/or in charge of them and in its section

1.c) it is specified that, "the treatment of personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed". known as the "data minimization" principle.

It should be clarified that this article does not limit the excess of data, but the need. It is

In other words, the personal data will be "adequate, pertinent and limited to the need", for which they were collected, in such a way that, taking into account the circumstances occurred at the time, if the objective pursued to obtain the data

could have been reached by other means, without carrying out a treatment excessive data, it should have been used, in any case. That's how it marks

also in recital 39 of the RGPD, when it indicates that: "Personal data should only be processed if the purpose of the processing could not reasonably be achieved By other means."

In the case at hand, the police officers took photographs of the IDs of the people identified in the demonstration under the following circumstances:

that the demonstration, attended by some 600 people, by groups of extreme left, anti-fascists and anarchists, among others; was not communicated to

Government Delegation; that during the act phrases were chanted such as: "Madrid will be the tomb of fascism", "free political prisoners", "police out of the neighborhoods of

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Madrid", "Police killer", among others; and that, in this context, the high risk production of altercations during the demonstration, as well as attacks against the agents of the authority, all this, together with the risk of contagion by the Covid-19 virus, the which has been found to multiply in these massive acts.

The fact that it was advised to take extreme precautions and to expedite as much as possible the interventions with protesters, using an exceptional means of identification how to take pictures with an official mobile phone belonging to the Directorate General of the Police, made it possible that, in the work of identifying the demonstrators interpersonal contact between them and the agents was reduced. All this coupled with, once the necessary identification checks have been made, the images taken with the mobile were deleted without leaving any trace in any file police, as confirmed by the D.G. from the police.

Therefore, according to the evidence available at this time, it is considered so that the use of the official mobile phone of the acting unit for taking photos photographs of the DNI of the claimants, in such exceptional circumstances as those exposed above, complies with the principle of data minimization, collected in article 5.1.c) of the RGPD, even more so when they were eliminated from the dispositive once the objective for which they were deleted has been fulfilled, leaving no trace of them in any file of the D.G. from the police.

In this sense, and in accordance with the provisions of article 89.1.a) of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (LPCAP) where it is established, regarding the Proposed Resolution in the pro-sanctioning procedures that:

1. The investigating body will resolve the completion of the procedure, with a file of the actions, without it being necessary to formulate the resolution proposal, when in the instruction of the procedure it is made clear that there is: a) The inexistence of the facts that could constitute the infraction (...)."

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: PROCEED TO FILE this sanctioning procedure against the GENERAL DIRECTORATE OF THE POLICE, for the alleged infringement of article 5.1.c) of the GDPR.

SECOND: NOTIFY this resolution to the GENERAL DIRECTORATE OF THE POLICEMAN.

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.

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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 to Public Administrations, and in accordance with the provisions of the art. 112 and 123 of the aforementioned Law 39/2015, of October 1, interested parties may file, optionally, an appeal for reconsideration before the Director of the Agency Spanish Data Protection Authority within a month from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and paragraph 5 of the provision
additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction
Contentious-Administrative, within two months from the day after
to the notification of this act, as provided in article 46.1 of the aforementioned Law.

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Director of the Spanish Agency for Data Protection.

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