

□ Procedure No.: PS/00070/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on 09/19/2018 filed
claim before the Spanish Data Protection Agency against B.B.B. (in
later, the claimed one). The grounds on which the claim is based are that the
claimed performs the functions of Mayor of ***LOCALIDAD.1, and in his
condition as such, was co-defendant with the City Council in a proceeding in
the Social Court. The respondent has exposed the ***DATE.1 on his page of
FACEBOOK the sentence integrates with all personal data and the rest of
the circumstances associated with the matter, being able to access it any
person.

Provides impression of the FACEBOOK page of the respondent in which
some comments stand out and attached, the complete sentence. In the sentence the
claimant is a plaintiff against the City Council and the defendant, as
Mayor of the municipality.

SECOND: After processing the claim to the CITY COUNCIL OF ***LOCATION.1
(Mayor) in the sanctioning procedure (PS/00430/2018), on 02/04/2020, it was issued
resolution of the director of the AEPD, agreeing: "DECLARE, in accordance with
what is established in article 90.1 of the LPCAP the non-existence of responsibility for
the CITY COUNCIL OF ***LOCALIDAD.1 (MAYOR) in the imputed infraction of the
article 6.1.f) of the RGPD."

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In its foundation of law III it was indicated:

“The provision through the FACEBOOK platform of the sentence
cia integrates containing personal data of the claimant, a colleague
of this and the circumstances surrounding the case, visible to anyone, at the end of
zeros, supposes the imputation to the CITY COUNCIL OF ***LOCALITY.1 of an infraction
tion of article 6. 1, f) of the RGPD for data processing through an autho-
automated, which through the social network allows you to add or upload documents, such as the
judgment.

It is observed that without the intermediation of the social network platform there would be no
It would have been possible to access and know the data that appeared in the sentence.

Inc. The City Council is the owner of files containing personal data
among others, those related to the development of labor relations.

However, in this case, it does not appear that the City Council had intervened
in any way in the setting of means or purposes of the treatment nor can it be said that
the mayor will act officially as spokesperson or person in charge of the treatment of that
but the Mayor as holder of the document of the sentence, in a private environment

As was his FACEBOOK page, he fully exposed the sentence. Although it
did to respond to the claimant's statements, which did not mention ex-
the name of the Mayor was posted on the B.B.B. website, and not on the
of the townhall. Therefore, the treatments carried out by the

City Council and the natural persons acting within it according to the instructions

tions given, of which even belonging to its structure treat the same at margin of the instructions given or for their own benefit. Although on the page FACEBOOK in which the sentence was exposed indicated his condition as Mayor, it belongs to the Mayor, not as such condition, but in a particular capacity. In this case, the responsibility for the use of the same is of said natural person as responsible for the treatment, not the City Council.

Article 28 of Law 40/2015, of 1/10, on the legal regime of the public sector co sets:

"1. They may only be sanctioned for acts constituting an infraction.

natural and legal persons administratively, as well as, when a Law recognize capacity to act, affected groups, unions and entities without legal personality and independent or autonomous estates, which result responsible for them by way of fraud or negligence."

The behavior that consists of making reference, in a social network, web page created and fed by B.B.B., personal data should be considered treatment of data, which in accordance with the technical and computer procedures involve carrying out the operations necessary to make its content accessible to people that are connected to the Internet, through the FACEBOOK platform, these being automated operations.

Being the principles of the field of criminal law applicable, with certain tices, in the sanctioning administrative sphere, and according to the proven facts, having also been admitted by B.B.B. who presented the sentence as a defense to the

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attacks that contained the claimant's statements, it is not possible to impute the infraction to the City Council and declare that it has committed the same.

Given that the events that gave rise to the claim occurred on 09/12/2018, and due to their seriousness, they are not prescribed, so procedures will be initiated lie against the person of B.B.B..”

THIRD: As actions within the claim that led to the PS/00430/2018 that are incorporated herein, included:

“In view of the facts and the documents provided by the claimant, at claimed, a copy of the claim is sent through the AEPD, so that would send:

1. Copy of the communications and of the adopted decision that has been sent to the claimant regarding the transfer of this claim.

2 Report on the causes that have motivated the incidence that has originated the claim.

Report on the measures adopted to prevent incidents from occurring Similar.

3.

On 11/23/2018, the CITY COUNCIL states in its response with signature of the Mayor, B.B.B., the respondent, indicating:

1) The claimant performs services for the City Council and has filed a lawsuit sends to the Social Court requesting the termination of his employment contract.

under derived from article 50 of the Workers' Statute, due to a situation of labor harassment, and repeated breaches of the City Council, requesting a compensation of €50,000 for moral damages. The content of the sentence reveals the vicissitudes in the claimant's relationship with a partner and

other personal circumstances of the claimant in the provision of services
such as moving to another plant and reassigning tasks among employees.

The respondent states that the day after the sentence was notified,
09/12/2018, the claimant on his FACEBOOK wall posted a message from the
that a copy is provided in which it begins "it is sad to have to go to trial to
that two days before the same, the defendant does what had to be done.
eight five months earlier, which to a large extent has motivated the demand to be
dismissed. I already knew when I filed the lawsuit the difficulty of proving
a situation of harassment at work, especially in a public administration
but if I had not gone to court, this matter would possibly be involved
in an unresolved drawer, and my personal and professional dignity questioned by
written, which in no way can admit... It has been clarified that my
behavior as an employee and co-worker has been correct".

He thanks the neighbors for their support and ends by indicating that he is going to present himself to the
upcoming elections.

Given these comments, the respondent states:

He exposed the sentence before the intention of the claimant to misrepresent the
a.

content and failure of the same that was unfavorable.

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On the same social network FACEBOOK, he made a statement in which
begins by indicating that "a person linked to the City Council is trying

of manipulating local public opinion with falsehoods and half-truths with related to a labor issue. Said person filed a labor lawsuit against the City Council and against me on 06/22", refers to the name and surname two, which are contained in the ruling of the sentence, and points out that for being illustrative goes and "to prove the facts more than the malicious manifestations without any proof" "I accompany in this message the complete sentence" by understand- der that it indicates that there is no indication of professional injury or attack on his dignity. Together with these comments, the ex-judgment set, of which he provides a full copy.

It states in the same that there is legitimacy for it derived from the article title 6.1. c) and 6.1.e) and at the individual level 6.1.f) of the GDPR due to the serious sations that he poured into his lawsuit and 69 and 70 bis 3 of the LBRL.

b.

It adds that the publicity of the personal data itself such as the situa- claimant's employment and health conditions have been made known by the claimant himself. claimant to many residents of the Council considering that it rules out the event illegality of the treatment object of the claim.

c.

In addition, there was a clear public interest as shown by the fact that presented citizen signatures in support or in the interests of the claimant (provides copies of the same).

2) From the reading of the judgment of 09/11/2018, it follows, among others items:

- A lawsuit is filed against the City Council and D. B.B.B. What defendant, in the judgment they also refer to him as Mayor.
- In proven facts, a co-worker of the prisoner is identified.

clamoring and details the situation of conflict and tension between the two, the harassment and

harassment that the employee claims to suffer and the request for measures to solve

Sell the situation that the claimant made to the City Council. are reported the

actions of the Mayor gathering before the complaints to both employees, the

reassignment of tasks and transfer to the second floor of the plaintiff, and

the interviews. The status of the plaintiff in an IT situation is mentioned

since 03/23/2018 "due to anxiety disorder, which continues". it contains

the agreement of the Mayor of 04/12/2018 of reassignment of tasks.

-

On legal grounds, the judge states that the plaintiff intends

of the termination of the contract based on workplace harassment. Enter to value said question.

- In the grounds of law it is indicated that "there is no evidence of the existence of

any determining indication of any situation of harassment, persecution

degradation or attack on the personal and labor dignity of the plaintiff" or

"The

Mayor here sued as the author of the persecution that the

plaintiff complaint, after the briefs presented by the parties on 25 and

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01/30 met with them...it is indicated that the Mayor intended to try to

solve the confrontation. The claim is dismissed.

3) Provide a copy of the document delivered to the claimant on 11/22/2018 in the

that details explanations of the reasons why it exposes the judgment dismissed

I send the request made to the AEPD. “

Likewise, in PROVEN FACTS of PS/00430/2018, there were:

“The claimant, labor employee, administrative assistant of the City Council of

1)

***LOCALIDAD.1 filed a lawsuit on 06/25/2018 before the Social Court

against D.B.B.B. and the City Council of ***LOCALIDAD.1 requesting the termination of the employment relationship for violation of their rights and compensation of 50 thousand euros for damages. The lawsuit ended with a sentence of 09/11/2018. in sentencing reference is made to D.B.B.B. as Mayor, chief of staff and its resolutions n dictated. The lawsuit “dismisses the one filed by the claimant, acquitting the defendants of the claims deducted against them.

2) The sentence assesses the alleged workplace harassment by the claimant, the bad relationships relations with a companion of the claimant, who is identified with names and surnames two, writings presented by her before the Mayor referring to the work environment with the re-claimant, the change of plant of the claimant as a result of a meeting of the Mayor with the parties on 02/02/2018. The ruling determines that there is no appraisal evidence of any determining evidence of any situation of harassment, persecution, degradation damage or attack on the personal and labor dignity of the plaintiff “To the Mayor, here defendant as the author of the persecution that the plaintiff denounces... met with them...and that the plaintiff stated that he did not want to be on the ground floor, so it is not explained what kind of retaliation is that when you are accessing what the actor himself requested “there is not the slightest indication that there has been a conduct of the Mayor aimed at persecuting or harming the plaintiff, rather everything contrary.” In the ninth proven fact it is indicated that the plaintiff “passed to the situation IT due to anxiety disorder on 03/23/2018, in which it continues”.

The claimant posted on his FACEBOOK page, associated with his name and

3)

surnames a message on 09/12/2018 at 18:21 indicated "Today is a great day" in which states that "It is sad to go to trial so that two days before it the defendant do what you should have done 5 months earlier, which has largely motivated that the claim be dismissed", without explaining what it refers to, continues indicating that "he knew that when he filed the lawsuit it would be difficult for him to prove the harassment in the work", that "it is clarified that his behavior as an employee and colleague of work has been correct", that "he has been working as a public employee for 18 months", he appreciates the neighborhood support received and announces that he is going to enter politics".

4) After seeing the claimant, Mayor of *** LOCATION.1, the claimant's announcement on the same social network FACEBOOK, on a page with the name B.B.B., without any reference to the City Council, presented a response letter entitled "CO-OFFICIAL MUNICATE" pointing out that "some people linked to the City Council trying to manipulate public opinion with falsehoods and half-truths cal in connection with a labor matter that should never have left the walls of the consistory".

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He indicates that said person filed his lawsuit on 06/22/2018 against him and the City Council, accusing him of workplace harassment and asking for compensation. quote him verbatim of the judgment with the name of the claimant. He states that in the face of the demonstrations nes malicious, exposes the full sentence. Add to your writing with your name

and surnames, the position of Mayor of ***TOWN.1

The defendant states that he removed the sentence during the processing of the petition.

4)

this procedure, upon receipt of the initiation agreement.”

FOURTH: On 03/09/2020, the director of the AEPD agreed:

“INITIATE PUNISHMENT PROCEDURE of WARNING to B.B.B.,

for the alleged infringement of article 5.1.a) of the RGPD, in accordance with article 83.5.a) and 58.2.b) and d) of the aforementioned GDPR.”

FIFTH: On 06/12 and 17/2020, the respondent presents the following allegations:

-The exposure occurred due to serious accusations of workplace harassment, non-compliance

repeated coughs of the City Council, violation of fundamental rights contained

in the demand and also in view of the misrepresentation of the content of the sentence itself.

claim that the claimant expressed in his writing on the social network Facebook on 09/12.

He considers that there is a legitimate interest of the Mayor to publish the sentence that declares

for the non-existence of such imputations.

-The total and complete exposition of the sentence is also justified, in terms of the

data processing by:

- Article 6.1. c) of the RGPD because it is a competence and legal obligation to inform the

neighbors by the local Corporations, which is provided for in the basic law of the

local moan.

-article 6.1 f) of the RGPD, when the legitimate interest of the person in charge concurs. Indicates that

The complainant's accusations affected his honor and his own image and rights.

fundamental facts and that in view of the very serious accusations, the disclosure of

the sentence must prevail over the data protection right of the claimant.

-States that once the electoral process held in May 2019 concluded, it does not pers-

aunt and the public interest in the publication of the judicial decision in question, reason

by which when the requirement of the agreement that transferred the

06/06/2019, the copy of the aforementioned ruling was removed from the Mayor's Facebook wall.

SIXTH: A resolution proposal was issued on 08/7/2020 with the literal: "That by the

Director of the Spanish Agency for Data Protection is sanctioned with

warning to B.B.B., with NIF ***NIF.1, for an infraction of article 5.1.a) of the

RGPD, in accordance with article 83.5 a) of the RGPD."

No objections are received against it.

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PROVEN FACTS

1) The claimant, worked as a labor staff, administrative assistant in the City Council-

***LOCALIDAD.1, and filed a lawsuit on 06/25/2018 before the Court of

the social vs. D. B.B.B. and the City Council of ***LOCALIDAD.1 requesting the extinc-

termination of the employment relationship for violation of their rights and compensation of 50 thousand

euros for damages. The lawsuit ended with a sentence of 09/11/2018. In the

sentence reference is made to D. B.B.B. as Mayor, chief of staff and their

resolutions issued. The lawsuit "dismisses the one filed by the claimant, absolves

seeing the defendants of the claims deduced against them".

The sentence assesses the alleged workplace harassment by the claimant, his bad re-

relationships with a partner, who is identified with names and surnames, written

presented by her to the Mayor regarding the work environment with the claimant, the

change of floor of the claimant as a result of a meeting of the Mayor with

the parties on 02/02/2018. The sentence determines that there is no evidence of evidence

any determinant of any situation of harassment, persecution, degradation or attention
ted to the personal and labor dignity of the plaintiff "To the Mayor, here defendant
as the author of the persecution that the plaintiff denounces....he met with them...and
that the plaintiff stated that he did not want to be on the ground floor, therefore
explains what kind of retaliation is that when you are accessing what the act itself
The petitioner requested "there is not the slightest indication that there has been a conduct of the
Mayor aimed at persecuting or harming the plaintiff, rather the opposite." In
the ninth proven fact, it is indicated that the plaintiff "passed to the IT situation by
anxiety disorder on 03/23/2018, in which it continues".

two)

The claimant posted on his FACEBOOK page, associated with his name and
surnames a message on 09/12/2018 at 18:21 indicated "Today is a great day" "It is sad
go to trial so that two days before the trial the defendant does what he had to
have done 5 months earlier, which to a large extent has motivated the demand to be
dismissed", without explaining what he means, continues indicating that "I knew that when
filed the lawsuit, it would be difficult for him to prove harassment at work", which "is clarified
satisfied that your behavior as an employee and co-worker has been correct.
to", who "has been working as a public employee for 18 months", is grateful for the support
nal received and announces "that he is going to enter politics". After viewing the claimed ad
of the claimant on the same FACEBOOK social network, on a page that includes
with his name, B.B.B., without any reference to the City Council, presented a letter of
response entitled "OFFICIAL COMMUNICATION" pointing out that "for some people
linked to the City Council is trying to manipulate with falsehoods and half
truths the local public opinion in relation to a labor issue that should not have
never left the walls of the consistory".

He indicates that said person filed his lawsuit on 06/22/2018 against him and the

City Council, accusing him of workplace harassment and asking for compensation. quote him verbatim of the judgment with the name of the claimant. He states that in the face of the demonstrations nes malicious, exposes the full sentence. Add to your writing with your name and surnames, the position of Mayor of ***LOCATION.1.

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Manifests the defendant who removed the sentence, during the processing of the presentation

3)

te procedure, “upon receipt of the initiation agreement.”

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

First of all, the jurisprudential doctrine of the Constitutional Court in this matter that configures the right to the protection of data as an autonomous fundamental right, differentiated from the fundamental right to privacy. Thus, it states in its Judgment 292/2000 the following:

Thus, the object of protection of the fundamental right to protection of data is not reduced only to the intimate data of the person, but to any type of personal data, whether intimate or not, whose knowledge or use by third parties may

affect their rights, whether or not they are fundamental, because its purpose is not only the individual privacy, which is the protection that art. 18.1 CE grants, but personal data. Therefore, it also reaches those data personal public, that by the fact of being, of being accessible to the knowledge of any, do not escape the power of disposition of the affected party because this is guaranteed by their right to data protection. Also for this reason, the fact that the data is of a personal does not mean that only those related to private or intimate life have protection of the person, but the protected data are all those that identify or allow the identification of the person, being able to serve for the preparation of their profile ideological, racial, sexual, economic or of any other nature, or that serve to any other utility that in certain circumstances constitutes a threat for the individual."

The aforementioned Judgment 292/2000 also determines the content of the right to the protection of personal data indicating in its legal basis 7:

"From all that has been said, it follows that the content of the fundamental right to data protection consists of a power of disposal and control over data personal information that empowers the person to decide which of these data to provide to a third party, be it the State or an individual, or what this third party can collect, and that it also allows the individual to know who owns that personal data and for what, being able to oppose that possession or use. These powers of disposition and control on personal data, which constitute part of the content of the right fundamental to data protection are legally specified in the power to consent to the collection, obtaining and access to personal data, its subsequent

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storage and treatment, as well as its use or possible uses, by a third party, be it the State or an individual. And that right to consent to knowledge and treatment, computerized or not, of the personal data, requires as complements essential, on the one hand, the ability to know at all times who has that personal data and to what use it is subjecting them, and, on the other hand, the power object to such possession and uses.

Finally, they are characteristic elements of the constitutional definition of the right fundamental to the protection of personal data the rights of the affected party to consent about the collection and use of your personal data and to know about them. and they turn out essential to make this content effective is the recognition of the right to be informed of who owns your personal data and for what purpose, and the right to be able to oppose such possession and use by requiring the appropriate party to put an end to the possession and use of data. That is, demanding from the owner of the file that Report what data you have about your person, accessing your appropriate records and seats, and what destination they have had, which also reaches possible assignees; Y, where appropriate, require him to rectify or cancel them.”

The RGPD defines in its article 4:

III

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

2) “processing”: any operation or set of operations carried out on

personal data or sets of personal data, whether by procedures

automated or not, such as the collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use,

communication by transmission, broadcast or any other form of enabling of

access, collation or interconnection, limitation, suppression or destruction;

4) “file”: any structured set of personal data, accessible in accordance with

to certain criteria, whether centralized, decentralized or distributed

functional or geographic;

7) “responsible for the treatment” or “responsible”: the natural or legal person,

public authority, service or other body which, alone or jointly with others, determines the

purposes and means of treatment; whether the law of the Union or of the Member States

determines the purposes and means of the treatment, the person in charge of the treatment or the

Specific criteria for their appointment may be established by Union Law.

or of the Member States;

The defendant exposes an integral sentence with the data of an employee of the

City Council in the social network FACEBOOK. It does not follow that in the provision of the

data and its disclosure to third parties through the social network has intervened

other will than that of the defendant on a particular page, when in the sentence the

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claimed accommodated his position to that of a procedural party in the trial (co-claimed

next to City Hall).

The post exposed by the defendant in said social network supposes a treatment automated, that using the infrastructure of FACEBOOK makes known some facts and data that allow the claimant to be identified through the integration exposed sentence, together with the diverse circumstances that in its pages are relate, among others, the development of their employment, or the allusion to third parties to the that is identified that occur in the story of the same.

The claimed person, in a private capacity, with his name and surnames on FACEBOOK expresses not only his opinions, but adds the data of the complainant that voluntarily and consciously choose to upload to said network knowing the effects multipliers that his visibility can have, and also holding a public office so it can without a doubt be qualified as responsible for the treatment to the decide the purpose and means of data collection and processing used in the frame of reference that it represents and that precedes. East

The preceding frame does not cite personal data.

The claimed person who is part of a public institution, even if he pours his opinions in a private and private network where you appear as a private user, you could having fought freedom of expression in another way, without the need for exposure part of a sentence. Faced with the claimant's appointment on FACEBOOK, it follows that does not expressly mention the respondent and the response regarding the protection of data that affects those of the claimant, must be proportional, considering in addition to that the respondent has an institutional relationship with the City Council. not being in in any way proportionate the total and integral exposition of the sentence with the vision of fully identifiable personal data, not only of the affected party but of third parties that appear in it. This defendant, an interested party in the judicial process, as public office that shares his condition, openly exposed in his user network of FACEBOOK the sentence that the same goes up and maintains a not short period of

time, even after the claimant's request which comes in the form of transfer of the claim by this Agency.

In the use of the data of the affected party, there must be some legitimate basis provided for in article 6.1 of the RGPD, there are several. The fundamental right of claimant, so that their data is not used in a surprising way, or in networks social, associated with the development of their task, when it comes to counterarguing for the claimed the manifestations of the claimed suppose a non-legitimate use of said data, not adequate, necessary, or justified.

It does not justify the presentation of the sentence in the FACEBOK social network that integrates the imputation of article 5.1.a) of the RGPD that indicates:

1. The personal data will be:

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

The use of the claimant's data on FACEBOOK is a use that has not been consented by its owner, and there is no legitimate basis in the treatment of said
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data in connection with the response to the complainant's comment that the complainant should have offered.

IV

When the defendant says to act on behalf of the City Council that holds competencies in matters of information to citizens, intending to give a official statement, it should be indicated that he used an account on FACEBOOK of his

ownership, in which their data appeared, without any reference to the City Council.

Even if the defendant attended the judicial procedure as Mayor, the bases legal that legitimize the processing of data vary from being a public entity and pursue general interests that may hold an individual.

For this purpose, recital 47 of the RGD on the legitimate interest, which states: "The legitimate interest of a data controller, including that of a person in charge to whom personal data may be communicated, or of a third, it can constitute a legal basis for the treatment, provided that it does not prevail the interests or the rights and freedoms of the interested party, taking into account account the reasonable expectations of data subjects based on their relationship with the responsible. Such legitimate interest could occur, for example, when there is a relationship relevant and appropriate relationship between the data subject and the controller, such as in situations where which the interested party is a client or is at the service of the person in charge. In any case, the existence of a legitimate interest would require careful assessment, even if a data subject can reasonably foresee, at the time and in the context of the collection of personal data, which may be processed for this purpose. In particular, the interests and fundamental rights of the data subject could prevail over the interests of the data controller when proceeding to the processing of personal data in circumstances in which the interested party does not reasonably expect further treatment to take place. Since it corresponds the legislator to establish by law the legal basis for the processing of personal data by public authorities, this legal basis should not apply to treatment carried out by public authorities in the exercise of their functions".

Although referring to the legitimate interest of the previous regulations, by having a doctrinal fixation in various sentences, section 95 of the Judgment of 07/29/2019, of the Court of Justice of the European Union ("CJEU"),

“Fashion ID” case that on the legitimate interest of article 7, letter f) of the directive 95/46, establishes three cumulative requirements for data processing personal information is lawful, namely, firstly, that the data controller or the third party or third parties to whom the data is communicated pursue a legitimate interest; in second, the need to process personal data for the satisfaction of the legitimate interest pursued, and, thirdly, the requirement that they do not prevail the fundamental rights and freedoms of the interested party (judgment of 05/04/2017, Rīgas satiksme, C-13/16, EU:C:2017:336, paragraph 28).

The protection regime of the interested party in the RGPD against the person responsible for the treatment that intends to use your personal data based on a legitimate interest is more intense in the RGPD than in the LOPD, since if in the latter, to allow the legitimate interest it was enough that "their rights or freedoms were not violated", in the GDPR regime it is enough that your interests, rights or freedoms prevail on said legitimate interest. Note that the word interest is added, in front of the www.aepd.es

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violation of the rights or freedoms previously necessary in the LOPD and that no infringement is necessary, but it is enough that their interests, rights or freedoms are affected, even slightly, provided that said interest prevail over the alleged legitimate interest. The only argument of the defendant for maintain the legitimate interest is that it answered the accusations, not nominative, but if it was understood against the city council, understanding they were serious and false. Regarding the concurrence of legitimate interest, it is considered that it could be

that the respondent was interested in responding by denying the news, but could do be done through the City Council. The particular interest of the natural person was not with which the defendant went to court. Their personal actions were not aired. personal but the mediate actions in the exercise of their position.

On whether the treatment is necessary for the intended purpose or purposes, it is repeated that the facts could have been made known by anonymizing all the personal data personal character and data that would make any person identifiable, therefore It was neither necessary nor proportional.

On the element that “the rights and freedoms do not prevail fundamental of the interested party”. The right to data protection may assign before other rights, however, the fact of criticism that "all public power must assume, true or not, you should not respond in this case through a social network individual of the claimed person who exposes his data in its entirety and make known clearly circumstances of your daily work life. Law cannot prevail of the claimed because, in the face of the opinion of the claimant, the exposition of his data is a surprising, unbalanced treatment that produces effects durable in proportion to the use that , the data has been kept in a social network, in open in this case if he even removed them as a precautionary measure when he received the letter of the AEPD when he receives the transfer as Mayor of the AEPD.

In this case, the existence of any legitimate interest on the part of the neither of the claimant, nor is it considered as such an official way of disclosing information from a municipality. This claim is therefore dismissed.

v

Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles costs for treatment, including the conditions for consent under the articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned article.

Article 83 of the aforementioned Regulation, with administrative fines of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% maximum amount of the global total annual turnover of the previous financial year, opting-I know for the highest amount.”

Article 58.2 of the RGPD indicates: "Each control authority will have all the following corrective powers indicated below:

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

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Regarding the period of prescription of infractions, the LOPDGDG sets a time of three years in its article 72.1:

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

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

Recital 148 of the RGPD indicates that in order to impose the measure co-appropriate remedial action, special attention should be paid to the nature, severity and duration violation, or to any relevant prior violation, and to any other cir-aggravating or mitigating circumstance. For natural persons, instead of a sanction

Due to a fine, a warning may be imposed.

Therefore, in accordance with the applicable legislation

the Director of the Spanish Data Protection Agency RESOLVES:

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

an infringement of article 5.1.a) of the RGPD, as determined in articles 83.5 a)

and 58.2.b) of the RGPD.

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

THIRD

: 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 reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month 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 in article 46.1 of the

aforementioned Law.

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

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

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

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

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

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Electronic Registration of

through the

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

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

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

precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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