

□ File No.: PS/00200/2022

## RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

### VOLUNTEER

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

### BACKGROUND

FIRST: On May 3, 2022, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against TITANIA COMPAÑÍA  
EDITORIAL, S.L. (hereinafter the claimed party). Notified the initiation agreement and  
After analyzing the allegations presented, on October 7, 2022, the  
proposed resolution that is transcribed below:

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File No.: PS/00200/2022

## PROPOSED RESOLUTION OF SANCTION PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claiming party), dated \*\*\*DATE.2,  
filed a claim with the Spanish Data Protection Agency. The motives  
on which the claim is based are the following:

The complaining party reports that several media outlets published on 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 provides the links to the news published in the  
claimed media websites.

On \*\*\*DATE.3, a new letter sent by the complaining party is received stating that he has been able to verify that there are means that have eliminated that information, although it accompanies publications made by some media communication on Twitter where it is still available.

SECOND: Dated \*\*\*DATE.4, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

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

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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, more than those initially denounced by the complaining party, where the voice of the complainant could be heard undistorted victim. These extremes could be verified in relation to TITANIA EDITORIAL COMPANY, S.L. with NIF B82938572. (hereinafter, the part claimed or TITANIA):

\*\*\*URL.1

For all those responsible for the treatment, it was issued, dated \*\*\*DATE.5, precautionary measure of urgent withdrawal of content or distorted voice of the

intervening in such a way that it would be unidentifiable in the web addresses from which make this content accessible.

On \*\*\*DATE.6, a letter sent by this entity is received by this Agency stating that they have proceeded to remove from the news the video with the declaration of the victim as soon as they have become aware of the withdrawal request; verifying what has been stated.

FOURTH: On May 3, 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 a) of the GDPR.

The aforementioned start-up agreement, in accordance with the rules established in the LPACAP, was notified to the claimed party on May 4, 2022.

FIFTH: With the registration date of May 10, 2022, the party The defendant filed a document requesting an extension of the term. That same day sent a letter in which it was communicated that the extension of the term was granted requested.

SIXTH: The claimed party submitted a brief of allegations on May 26, 2022, in which, in summary, he stated that:

1. Lack of information on the procedure:

The claimed party alleges that they have not been notified of the claim or of the previous investigation actions, in addition, the AEPD did not contact her to gather the pertinent information.

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It also highlights that the Provisional Measure Adoption Agreement refers to the article 6.1 a) of the GDPR and, however, the Agreement of initiation refers to a breach of article 5.

2. The voice as personal data exclusively identifiable by a limited number of people:

In the statement of allegations, TITANIA makes several statements in relation to this question:

“The data isolated from the voice, by itself, will make the person identifiable as long as there is a previous link with her, so that, if we do not know said person, it will be quite impossible for us to identify her solely by her voice.”

"(...) the voice by itself does not identify the person, although it can make it identifiable as long as we have any other information about her. (...)"

"(...), the voice is the only personal data that appears in the article in El Confidencial, thus making it very difficult to identify it by the El Confidencial audience that had access to the publication.”

"For all these reasons, it is necessary to conclude that the voice, even if it is personal data, allows the owner to be identified if we know said person directly. in case

Otherwise, identification would be unlikely. Something similar happens with the initials or with the first name, only in the case of knowing some other information about the person, the identification of the person could be carried out, not being the initials or the name by itself, concise enough to identify someone.”

In addition, in the conclusions it states:

“The voice is a sui generis personal data because it does not make the person recognizable,

unless there is a prior relationship. Therefore, its diffusion is not comparable to the diffusion of an image, a name, an address or an email. No one who has seen the recording in El Confidencial who does not know the victim, may know who he is. For those people, the victim is so anonymous or more, that if his initials were put on the article (measure that the AEPD considers pseudonymization).”

### 3. Trials as public acts:

In its allegations, the defendant indicates:

“(…) the principle of publicity is the basis of all criminal proceedings. The celebration of the Criminal trials, by their very nature, are public and any person can enter into a Courtroom to witness them. However, the Criminal Procedure Law provides that at the request of a party or the Judge a trial can be held behind closed doors, it is say, without an audience.”

“Only in supposedly appraised and motivated (for reasons of public order, morality, protection of minors, etc.), we will find ourselves before the celebration of a trial behind closed doors, as exceptions to the principle of publicity.”

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“(…), the Chief Judge of Court \*\*\*JUDGED.1 did not make the decision to hold the trial behind closed doors, therefore, anyone could have attended it.”

“TITANIA has not violated any duty of secrecy or confidentiality by making available available to the public part of the recording of the trial followed in the Court

\*\*\*COURT.1 on \*\*\*DATE.1 and has not revealed any information, not even the voice of the victim, which could not have been accessible by third parties, but has used

the audio in order to inform and inform the public of the development of the

Judgment view.”

"For this reason, we understand that you have not violated the right to data protection of the

victim by making available on its website part of the statement made before the

Judge."

4. Compliance with the principles relating to treatment. Data processing not

excessive:

Titania analyzes the content of article 5.1 c) of the GDPR.

"(...) we have to take into account the concurrence of two factors to conclude if the

treatment complies with the principle of data minimization: (i) if the data is

excessive and (ii) if they are necessary for the purpose pursued.

Regarding whether the data is excessive, as has been said, the article in question does not

collects no other personal data other than the voice included in the trial recording.

Regarding the purpose pursued, it consists of providing complete information to the

readers about a criminal case with undeniable significance and public interest.

Simply providing the transcription of the statement does not offer the same level of

detail or information to the public since, as indicated by the AEPD in its

written, the voice can provide information about your emotional state, in addition to

offer realism and even more veracity to the news. Therefore, the aim pursued

justifies the treatment.

We understand, like the AEPD, that in the event that the news incorporates more

personal information of the victim and, if it does not contribute absolutely nothing to the

informational purpose pursued, the treatment could be considered excessive (...)"

(...) in this case, TITANIA does not provide any further information in relation to the

victim of the crime, only treats the voice of the same, data that by itself, makes

hardly identifiable a person, especially if the person who hears said voice does not know

the person in question.

Well then, everything that has been said up to now: (i) the voice as data that does not identify directly to a person; (ii) the most complete and exact information provided by the recording and (iii) the justification of the publication for the informational purpose pursued, has formed part of the consideration carried out by TITANIA at the time of carrying out publication of the news item, estimating that it complies with all the

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principles established in article 5 of the General Regulations for the Protection of Data."

#### 5. Legality of the treatment:

The claimed party analyzes whether there is a legitimacy basis to carry out the treatment, stating the following:

"TITANIA, in its journalistic activity, acts as data controller

publishing information about natural persons protagonists of the news of the

newspaper. Said processing of personal data is carried out on the basis of interest

legitimate digital newspaper, which is none other than informing the public about facts newsworthy."

"(...) resorting to the factors to take into account to carry out this weighing,

according to the same Opinion 06/2014 of the GT29 we highlight the following: "The more compelling is the public interest or the interest of the community in general, and how much more clearly the community and stakeholders recognize and expect the controller can act and process the data to pursue those

interests, more weight in the balance said legitimate interest.”

“(…) the fact that the news is about is of pressing public interest. Of

In fact, this is recognized by the doctrine of the Supreme Court and the Constitutional Court when assessing

the dissemination of current news related to investigations and convictions

to the extent that they can contribute to a social debate and foster

debate in a democratic society. (…)

From this perspective, given the social scourge

of the crimes of sexual abuse of women and more specifically, the massive abuses,

the general interest of disseminating the news is undeniable. and before such

atrocities, society wants to know data about the future of the procedures

or what is the punishment finally imposed.”

“(…) in order to provide the information in the most objective, real and

“raw” as possible, it was decided to incorporate the recording, thus giving even more credibility and

veracity of the victim's statement and, therefore, offering information of

more quality and completeness to the readers who, in reality, are being informed

of the facts directly by the victim, without the intervention of a journalist who

transcribe the statement and without distorting the voice, thus losing all the narrative force.

Therefore, this party understands that the processing of personal data is lawful.

based on the basis of legitimation of article 6.1.f) of the GDPR, the interest being

TITANIA's right to information is legitimate.”

6. Prevalence of freedom of expression and the right to information as

Fundamental rights.

The defendant alleges the clear prevalence of freedom of expression and the right

information against other fundamental rights. acknowledge the existence of

certain limits, which must be interpreted very restrictively when the freedom of

expression is exercised by journalists, citing jurisprudence in this regard.

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## 7. Necessity and proportionality of the treatment.

Titania defends the necessity and proportionality of the treatment.

"(...) the voice of the protagonist of the news is not a disproportionate fact since

which is the voice collected in the statement before the judge, this being the newsworthy event.

It would have been disproportionate to include a photograph of him, or his address, or his name.

But it is not to include irrefutable proof of the newsworthy event, even more so when the

itself cannot be recognized by the vast majority of people who access

to her.

Nor is it unnecessary information. It is a justified treatment for the sake of the end

pursued, which is to inform in the most real and objective way possible. Put the

accent on the way in which the victim recounts the atrocious facts narrated so that

acquire all the dimension and importance they deserve and, in this way, can

be valued by society, without artifice or twisted interpretations, contributing

thus to the social criticism that should preside over every democratic society."

In the conclusions of the pleadings brief, the defendant states:

"(...) it must be added that TITANIA offered other guarantees such as:

- The consideration of additional measures, such as the procedure for the exercise of rights of the interested parties.

- The assurance of not having included any more personal data in the information, so that when crossing it with the voice, it would make it more easily identifiable to the interested.

This being the case, the result of the weighting carried out taking into account all

these elements, was that the publication of the news met all the requirements  
timely legal: the treatment principles are complied with, the treatment is lawful,  
according to the weighting, the right to information prevails and, in any case, the  
Treatment is necessary and proportionate according to the purposes pursued.  
However, if the interested party considers that this fact harms her rights and  
interests, had the possibility of exercising the right to delete the data  
or to the opposition of the treatment of the same. Something that somehow came to pass  
through the Agreement for the adoption of a provisional measure by the AEPD on  
past \*\*\*DATE.7 on which the deletion of the recording was requested, to which,  
As explained at the beginning of these allegations, TITANIA agreed and, therefore,  
the conflicting treatment ceased.”  
"We understand that the AEPD could come to analyze whether the weighting carried out by  
TITANIA responds to reasonable criteria, but what we reject is that it  
start a disciplinary procedure based on the breach of art.5.1.c)  
considering the data processing as excessive.”

8. Graduation of the sanction:

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Titania considers that, in the assessment made by the AEPD in the initiation Agreement,  
the amount set is disproportionate in relation to the alleged infringing act.  
You understand that none of the aggravating factors mentioned in said Agreement apply and,  
in his view, numerous mitigating circumstances should apply.

SEVENTH: A list of documents in the file is attached as an annex.

procedure.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

#### PROVEN FACTS

FIRST: On \*\*\*DATE.2, 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.3, a new letter sent by the complaining party is received

stating that he has been able to verify that there are means that have eliminated that

information, although it accompanies publications made by some media

communication on Twitter where it is still available.

SECOND: Dated \*\*\*DATE.4, 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

research activities, found the publication indicated below where

the victim's voice could be heard without distortion:

\*\*\*URL.1

FOURTH: On \*\*\*DATE.5, a precautionary measure is issued for the 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, in

concrete of:

\*\*\*URL.1

FIFTH

: Dated \*\*\*DATE.6, a letter sent by

this entity stating that they have proceeded to remove from the news the video with the declaration of the victim as soon as they have learned of the request of withdrawal.

SIXTH: It was verified that, in the link,

\*\*\*URL.1

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the video with the victim's voice had been removed, reflecting said circumstance in the report of previous investigation actions of January 24, 2022.

## FUNDAMENTALS OF LAW

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

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

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

Organic 3/2018, of December 5, Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "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."

In response to the allegations presented by the respondent entity, it should be noted the next:

Regarding the allegation of lack of procedural information, the party claimed indicates:

"As a preliminary matter, this representation wants to state that they have not been given transfer (i) neither of the claim of A.A.A., (ii) nor of the previous actions of investigation carried out by the General Subdirectorate of Data Inspection that, furthermore, he did not contact TITANIA COMPAÑÍA at any time EDITORIAL to gather the pertinent information."

Therefore, this claim process lacks sufficient guarantees to to be able to defend the interests of the defendant, especially when in the Settlement Agreement adoption of a provisional measure sent by the AEPD last \*\*\* DATE.7 urging to the withdrawal of the recording, reference is made to "that the public exhibition of the personal data through the aforementioned addresses may constitute a violation of Article 6.1 a) of Regulation (EU) 2016/679 "and, however, the current Agreement alludes to a breach of article 5."

Regarding the failure to transfer the claim and the previous actions of investigation, it should be noted that on May 10, 2022, he entered the AEPD a letter from TITANIA in which it requested an extension of the term, in which indicated the following:

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"YO. That on May 4, 2022 TITANIA learned, through the headquarters of the AEAT, of the AGREEMENT TO START THE SANCTIONING PROCEDURE DOR with file number PS/00200/2022, through which we are informed of an alleged violation of article 5.1.c) of the GDPR, typified in article 83.5.a) of the GDPR, granting us a period of 10 business days to formulate allegations.

II. That, through this document, we come to request the 5-day extension of the mentioned period, offered in said notification, to present allegations.

Therefore, TITANIA REQUESTS:

(i) That this document is deemed to have been submitted in due time and form, and to be submitted gives the request for an extension of the 5-day period for the presentation of allegations."

In response to said request, on \*\*\*DATE.3 the AEPD sent a letter to the claimed party in which the extension of the requested term was granted.

In this regard, to date the AEPD has not received any request from TITANIA regarding the submission of a copy of the file. It is attached as an annex to the this Resolution Proposal list of documents in the procedure.

Regarding the second allegation, in the Agreement for the adoption of a provisional measure the following was stated:

"Carried out by this Agency a provisional assessment of the facts in the framework of the Previous Investigative Actions File no. \*\*\*FILE.1, addressed to identify the person responsible for the publication, it is estimated that there are reasonable indications that the public exposure of personal data through the aforementioned addresses nes may constitute a violation of article 6.1 a) of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons with regard to the processing of personal data and the release on the circulation of these data and which repeals Directive 95/46/CE (Regulation-

General Data Protection Regulation, hereinafter GDPR). (underlining is ours).

The invocation of article 6.1.a) of the GDPR is made in the measure requirement provisional document issued by the AEPD on \*\*\*DATE.5, is an unrelated act and prior to the procedure that is now being processed. Said act was issued in accordance with the information available on that date, very close in time to the moment in which the AEPD had received the second document presented by the claimant (on the day \*\*\*DATE.3) and one day after the admission for processing of the claim.

For its part, the Commencement Agreement of May 3, 2022, indicates the following:

“The known facts could constitute an infraction, attributable to the party. claimed, of article 5.1.c) of the GDPR, with the scope expressed in the Fundamentals previous legal provisions, which, if confirmed, could imply the commission of the infringement typified in article 83.5, section a) of the GDPR,(...)” (the underlining is our).

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“FIRST: INITIATE SANCTION PROCEDURE against TITANIA COMPAÑÍA EDITORIAL, S.L. with NIF B82938572, for the alleged violation of article 5.1.c) of the GDPR, typified in article 83.5.a) of the GDPR.” (underlining is ours).

In order to respond to the claim raised, it is necessary to make reference to the content of article 64.2 of the LPACAP, which provides the following:

"2. The initiation agreement must contain at least:

b) The facts that motivate the initiation of the procedure, its possible classification and the

sanctions that may correspond, without prejudice to what results from the instruction.”

In this same sense, article 68.1 of the LOPDGDD provides the following:

"Article 68. Agreement to initiate the procedure for the exercise of the sanctionadora

1. Concluded, where appropriate, the actions referred to in the previous article, such as

It will be the responsibility of the Presidency of the Spanish Agency for Data Protection, when as appropriate, issue an agreement to start the procedure for the exercise of power disciplinary action, in which the facts will be specified, the identification of the person or entity entity against which the procedure is directed, the infraction that could have been committed se and its possible sanction.” (underlining is ours).

In conclusion, the disciplinary procedure begins with the initiation agreement, which, in accordance with the provisions of articles 64 of the LPACAP and 68 of the LOPDGDD, is the act where the imputations are specified from the elements of judgment with which it is counted.

II

The defendant alleges that the voice is exclusively identifiable personal data for a limited number of people:

In response to this allegation, it can be stated that the voice of the person is information of personal character that can, by itself, make the person to whom it is identifiable belongs, even when the journalistic publication in which it appears does not include any other personal data.

Indeed, the voice fits perfectly into the definition of what is data from personal nature of article 4.1) of the 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

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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.

Voice is produced when air passes from the lungs through the airways.

(windpipe) and through the larynx, causing the vocal cords to vibrate, creating

Sound. Sound that becomes words thanks to the muscles that control the

soft palate, tongue and lips, without forgetting the cavity where

find these muscles, which acts as a sounding board. How can

appreciate, there are various organs involved in speech, different in each

of people, in fact, and by way of example, the vocal cords of the

Men are longer and thicker than those of women and children, which is why the

voice of those is deeper than that of these, like the sound of a double bass

It is deeper than that of a violin.

But still, not all men's vocal cords are equally long, which is why

for which there are men with a more or less serious voice, as happens with those of women, which is why there are women with more or less high-pitched voices.

In addition, we have already seen that not only the vocal cords, but many more organs that, depending on their strength and structure will make each voice unique and different. Therefore, we can identify the people we know by voice without having to see them (for example, when we have a telephone conversation with someone close to us or we hear someone known on the radio); therefore, anyone who knows the victim can be identified by hearing his voice.

In this sense, 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, just as it 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,

<<any information concerning natural persons identified or identifiable>>, an issue that is not controversial."

The victim's voice identifies her directly in her environment (understood in a broad sense, encompassing the family and the social), since, as determined in Opinion 4/2007 of the Article 29 Working Group, "it can be considered "identified" a natural person when, within a group of people, they are "distinguishes" from all other members of the group.

And it is clear that the voice of any person, regardless of whether their features are more or less marked can cause it to be identified as

minimum by those who are part of the circle closest to the victim or may meet her anyway. Let's imagine relatives, co-workers or studies, social activities, etc. For this reason, the diffusion of the voice of the victim has

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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.

That same voice may allow a larger segment of the population to identify the victim.

population if it is combined with other data, even with additional information, taking into account

to the context in question. Once again, Opinion 4/2007 clarifies that "In the cases

in that, at first glance, the available identifiers do not make it possible to single out a

particular person, that person may still be "identifiable" because that information

combined with other data (whether the data controller has

knowledge of them as otherwise) will allow that person to be distinguished 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). The risk materializes with the fact that a single person can

identify the victim.

In accordance with the provisions of recital 26 of the GDPR: "The principles of the data protection should apply to all information relating to a natural person identified or identifiable.(...)To determine if a natural person is identifiable, all means should be taken into account, such as singling out, which can reasonably be used by the controller or any other person to directly or indirectly identify the natural person. To determine if there is a reasonable probability that means will be used to identify a person physics, all objective factors, such as costs and time required for identification, taking into account both the technology available at the time of treatment as technological advances. (...)"

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.

Especially in this case, given that what has occurred is the dissemination of the story of a victim of multiple rape.

The claimed party acknowledges that the owner of the voice can be recognized by those who are part of her close circle or know her, a risk that must be avoided.

In conclusion, a person can be identified by their voice. The publication of the data the victim's voice alone and undistorted put her at risk certain of being identified by people who were unaware of her status as a victim.

IV.

Subsequently, the defendant makes a series of allegations, listed below:

continuation. All of them are closely linked to the weighting that

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made by the media prior to the publication of the news. By

For this reason, they will be analyzed jointly:

1. Trials as public acts.
2. Prevalence of freedom of expression and the right to information as Fundamental rights.
3. Compliance with the principles relating to the processing and processing of data not excessive.
4. Legality of the treatment.
5. Necessity and proportionality of the treatment.

In relation to the allegation that trials are public acts, it is necessary to clarify that the hearing held before \*\*\* COURT.2 is one thing and the treatment of personal data that has given rise to this sanctioning file.

Indeed, this procedure is not intended to examine how the trial, if the hearing took place in an oral and public trial or behind closed doors, the decisions adopted by the judicial body during the course of the same. This file deals to determine the possible liability incurred by the claimed party as consequence of their actions in the field of personal data protection staff.

For this reason, and previously, we must clarify what is the data processing that is being analyzed in this proceeding.

For these purposes, the GDPR defines in its article 4.2 the processing of personal data:

“any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or

modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, comparison or interconnection, limitation, suppression or destruction". (underlining is ours).

It is the diffusion of the voice of the victim that has been carried out by the claimed party that is subject of this procedure.

Once the treatment to be analyzed is delimited, we must identify who is the responsible for it.

Article 4.7) of the GDPR establishes that it is ""responsible for the treatment" or

"responsible": the natural or legal person, public authority, service or other

body that, alone or jointly with others, determines the purposes and means of processing; Yeah

the law of the Union or of the Member States determines the aims and means of the

treatment, the person responsible for the treatment or the specific criteria for its

appointment may be established by law of the Union or of the States

members;".

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As established in Directives 07/2020 of the European Protection Committee

of Data (hereinafter CEPD) on the concepts of data controller and

mandated in the GDPR, the concept has five main components: "the

natural or legal person, public authority, service or other body", "determines",

"alone or together with others", "the purposes and means" and "of the treatment".

In addition, the concept of data controller is a broad concept, which deals with

to ensure effective and complete protection for the interested parties. It has determined so

the jurisprudence of the Court of Justice of the European Union. For all we will quote the Judgment of the CJEU in the Google-Spain case of May 13, 2014, C-131/12, the which considers in a broad sense the person responsible for the treatment to guarantee “an effective and complete protection of the interested parties”.

It is clear that the claimed party is responsible for the treatment, when deciding on the purposes and means of processing, as it holds the power to do so by having a decisive influence on themselves. In this way, the purpose is informative and the The media encompass decision-making power from the way it is distributed or made available information available to the public, including its content. the middle of communication has, in order to fulfill its purpose, once in the exercise of his journalistic work has collected all the precise information, what information provided and by what means, in what terms and with what personal data.

Thus, Guidelines 07/2020 on the concepts of data controller and in charge in the RGPD specify that “the person in charge of the treatment is the party that determines why the processing is taking place (i.e. “for what purpose” or “what for”) and how this objective will be achieved (that is, what means will be used to achieve it)”.

In this sense, the defendant, in its statement of allegations, affirms the following:

“TITANIA, in its journalistic activity, acts as data controller publishing information about natural persons protagonists of the news of the newspaper. Said processing of personal data is carried out on the basis of interest legitimate digital newspaper, which is none other than informing the public about facts newsworthy.” (underlining is ours).

Consequently, TITANIA is the data controller.

For these purposes, it is necessary to differentiate between the public nature of the trial and the treatment that, subsequently, has been carried out by the claimed party in order to to provide news coverage. When publishing journalistic information, the

means of communication has carried out a treatment different from that which, as just indicated, is responsible. In said treatment you must respect the principles of article 5 of the GDPR, among them, the principle of data minimization.

TITANIA had to carry out a weighting prior to the publication of the information, consideration that he claims in his allegations to have carried out. Also, the middle of communication had to carry out a risk analysis prior to the news publication. Said analysis would make it possible to identify the risks that derived from the publication, trying to prevent them from materializing or reducing

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these to the minimum expression. We will refer to the content of said analysis of risks later.

In its allegations, the defendant affirms the clear prevalence of freedom of expression and the right to information, especially when exercised by information professionals through the press.

In the opinion of this Agency, said prevalence is neither absolute nor general and requires, in

In any case, a consideration that the media outlet claims to have carried out. In

In this sense, without prejudice to what is stated in the legal grounds VIII, IX and X, the initiation agreement, highlighted the following:

"(...) in this specific case, it is not a question of diminishing the Fundamental Right to Freedom of Information due to the prevalence of the Fundamental Right to Protection of Personal Data, but to make them fully compatible so that both are absolutely guaranteed. That is, there is no question of the



freedom of information from the media but the weighting with the right to data protection based on proportionality and the need to publish the specific personal data of the voice. This situation could have been resolved with the use of technical procedures to prevent voice recognition, such as, for example, the distortion of the victim's voice or the transcription of the report of the multiple rape, both security measures, applied depending on of the case in an ordinary way by the media.”

Titania, when analyzing compliance with the principles related to treatment, considers that the data is not excessive, since the article did not collect any other data personal rather than the voice included in the trial recording.

In relation to said statement and as indicated above, it is necessary to bear in mind that it was a highly mediated legal proceeding, with a extensive coverage by various media that continuously provided information regarding the victim, his environment, the accused and the violation suffered. All this constituted additional information to the published by El Confidencial in its article and should have been taken in consideration when assessing risks.

The defendant then alleges:

“(…). But in this case, TITANIA does not provide any further information in relation to with the crime victim, only deals with the victim's voice, a fact that by itself, makes a person difficult to identify, especially if the person who hears said voice does not knows the person in question.”

In the foundation of law III it has been highlighted that the voice is a data of character personal data that by itself allows the person to be identified.

Regarding the legality of the treatment:

In her writing TITANIA she states:

"(...). Said processing of personal data is carried out on the basis of interest

legitimate digital newspaper, which is none other than informing the public about facts newsworthy."

The claimed party emphasizes that the treatment has been carried out under the legitimate interest (article 6.1 f) of the GDPR). However, this Agency advocates for a data processing that, even based on said legal basis, is fully respectful of the principles contemplated in article 5 of the GDPR, especially with the principle of data minimization.

In its statement of allegations, the defendant continues to argue:

"Therefore, going to the factors to take into account to carry out this weighing, according to the same Opinion 06/2014 of GT29 we highlight the following:

"The more compelling the public interest or the interest of the community in general, and the more clearly the community and stakeholders recognize and expect the data controller to act and process the data to pursue those interests, more weight in the balance said legitimate interest.

There is no doubt that the fact on which the news is concerned is of a pressing public interest. In fact, this is recognized by the doctrine of the Supreme Court and the Constitutional when valuing the diffusion of current news related to criminal investigations and convictions to the extent that they may contribute to a social debate and encourage debate in a democratic society. This is how he recognizes it also the AEPD itself in the Agreement when affirming that "the obvious interest is not denied

informative public of the news". From this perspective, given the social scourge of crimes of sexual abuse of women and more specifically, mass abuse, is undeniable general interest in the dissemination of news. And in the face of such atrocity, society wants to know data about the future of legal proceedings or what is the punishment finally imposed."

In relation to said allegation, Opinion 06/2014 of the Working Group of the Article 29 on the concept of legitimate interest of the data controller data under Article 7 of Directive 95/46/EC, when examining the legal basis of the legitimate interest of article 7.1.f) of Directive 95/46/CE, fully transferable to the current article 6.1.f) of the GDPR, also indicates the following:

"(...), using an adequate legal basis does not exempt the person responsible for the data processing of its obligations under article 6 (current article 5 of the GDPR) relating to impartiality, legality, necessity and proportionality, as well as well as the quality of the data. For example, even data processing based on the reason of legitimate interest (...) would not allow the collection excessive data for a specific purpose." (in our case, it would not allow a excessive data processing).

Likewise, Opinion 06/2014 of the Article 29 Working Group states:

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"(...).The availability of alternative methods to achieve the objectives pursued by the data controller, with less negative impact on the concerned, should certainly be a relevant consideration in this context."

In the case analyzed, said alternative methods would consist of the distortion of the voice of the victim or in the transcript of his statement, which included the account of the multiple violation. The minimization of data, through the use of any of said alternative methods, would make it possible to make the exercise of freedom of expression compatible information with the right to protection of personal data of the victim.

In relation to the necessity and proportionality of the treatment, TITANIA affirms in the allegations:

"(...), the voice of the protagonist of the news is not a disproportionate fact since which is the voice collected in the statement before the judge, this being the newsworthy fact.

It would have been disproportionate to include a photograph of him, or his address, or his name.

But it is not to include irrefutable proof of the newsworthy event, even more so when the itself cannot be recognized by the vast majority of people who access to her."

It is insisted once again that the voice allows the identification of the victim and its publication puts it at certain risk of being recognized.

TITANIA alleges:

"It is not an unnecessary piece of information either. It is a justified treatment for the sake of the end pursued, which is to inform in the most real and objective way possible. Put the accent on the way in which the victim recounts the atrocious facts narrated so that acquire all the dimension and importance they deserve and, in this way, can be valued by society, without artifice or twisted interpretations, contributing thus to the social criticism that should preside over every democratic society." (underlining is our).

Examining the content of the brief of allegations presented by Titania, it is appreciated that in the weighting that the media outlet claims to have carried out, it has had a fundamental weight the end pursued. In fact, in said writing other

two statements related to the purpose pursued when deciding to publish the voice of the undistorted victim:

"Regarding the purpose pursued, it consists of providing complete information to the readers about a criminal case with undeniable significance and public interest.

Simply providing the transcription of the statement does not offer the same level of detail or information to the public since, as indicated by the AEPP in its written, the voice can provide information about your emotional state, in addition to offer realism and even more veracity to the news. Therefore, the aim pursued justifies the treatment." (underlining is ours).

"(...) in order to provide the information in the most objective, real and "raw" as possible, it was decided to incorporate the recording, thus giving even more credibility and veracity of the victim's statement and, therefore, offering information of

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more quality and completeness to the readers who, in reality, are being informed of the facts directly by the victim, without the intervention of a journalist who transcribe the statement and without distorting the voice, thus losing all the force narrative." (underlining is ours).

At this point, let's focus our attention on a fundamental issue that time to carry out the risk analysis prior to the publication of the news, which as responsible for the treatment, had to carry out TITANIA before publishing the news:

The news has been decided to be offered together with the recording of the victim's voice without misrepresent or without a transcript of your statement, including the account of the

multiple rape, which made the publication of his voice unnecessary.

The chosen treatment has two characteristic features:

a) On the one hand, its durability over time: once the news is published, remains on the network, making it possible to access its content (and, in this case, the voice of the victim) both through newspaper archives and through search engines.

search, as many times as desired and without time limitation.

b) On the other, its amplifying effect: as it is a means of communication that facilitates information through the internet, making knowledge of that information accessible information exponentially and ubiquitously.

The information, including the voice of the victim, has been made available to a large number of people, allowing access to it through any type of electronic device that allows you to consult the Internet, twenty-four hours a day and for unlimited time. Consequently, the risk that the victim runs of being recognized has been increased exponentially.

The question is that behind that voice that has been decided to publish, there is a person vulnerable, due to the experience suffered.

You have been the victim of a violent and sexual assault (a multiple rape).

Once the trial is over, he has to face the challenge of getting his life back.

Try to overcome the physical and psychological consequences of the experience trauma you have suffered.

In this aspect, your environment plays a decisive role. Unfortunately, even today produce situations in which victims of sexual offenses may be stigmatized despite their status as victims, sometimes even seeing themselves forced to change their place of residence.

For this reason, it is essential to treat with the greatest care any personal data that allow you to reveal your identity, prevent you from being recognized as a victim. Here plays a

decisive role played by the means of communication and, especially, the analysis of risks that carried out prior to the publication of the information.

Said analysis allows the medium to detect the need to guarantee the principle of data minimization (distorting the voice or including a transcription of the

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victim's statement). In this way, the exercise of freedom is made compatible of information with the protection of personal data of the victim.

TITANIA also alleges that "(...) it must be added that TITANIA offered other guarantees such as:

- The consideration of additional measures, such as the procedure for the exercise of rights of the interested parties.
- The assurance of not having included any more personal data in the information, so that when crossing it with the voice, it would make it more easily identifiable to the interested.

This being the case, the result of the weighting carried out taking into account all these elements, was that the publication of the news met all the requirements timely legal: the treatment principles are complied with, the treatment is lawful, according to the weighting, the right to information prevails and, in any case, the Treatment is necessary and proportionate according to the purposes pursued.

However, if the interested party considers that this fact harms her rights and interests, had the possibility of exercising the right to delete the data

or to the opposition of the treatment of the same. Something that somehow came to pass

through the Agreement for the adoption of a provisional measure by the AEPD on

past \*\*\*DATE.7 on which the deletion of the recording was requested, to which,

As explained at the beginning of these allegations, TITANIA agreed and, therefore, the conflicting treatment ceased.”

Well, the procedure for the exercise of rights by the interested parties is not

an additional or supplementary guarantee that it graciously makes available to the

interested parties, but an obligation of the data controller in accordance with the GDPR.

Regarding the assertion that the interested party could have exercised her rights of

opposition and suppression if he considered that the publication of the voice harmed him,

we must mean that CEPD Guidelines 4/2019 provide for the

principle of loyalty that "Those responsible for the treatment must not transfer the

risks of the company to the interested parties". The assessment of the risks that the

publication of the voice produces in the victim, and the establishment, where appropriate, of

security measures in order to avoid the materialization of risks

corresponds to the person responsible for the treatment and cannot discharge his lack of diligence

in those interested.

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As regards the graduation of the sanction, the defendant alleges:

(...) This party understands that, in the assessment made by the AEPD in the Agreement of

initiation of disciplinary proceedings, the amount set is disproportionate in relation to

with the alleged infringing act.

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The initial agreement established that "the sanction that could correspond would be €50,000 (fifty thousand euros), without prejudice to what results from the instruction".

For its part, article 83.5.a) of the GDPR, under the heading "General conditions for the imposition of administrative fines" provides that "Violations of the following provisions will be sanctioned, in accordance with section 2, with fines administrative costs of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equal to a maximum of 4% of the total annual turnover of the previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent in accordance with articles 5, 6, 7 and 9;"

Therefore, an administrative fine of 50,000 euros is in the lower section of the possible sanctions, thus complying with the provisions of article 83.1 of the GDPR: "Each control authority will guarantee that the imposition of fines administrative proceedings under this article for violations of this Regulations indicated in sections 4, 5 and 6 are in each individual case, effective, proportionate and dissuasive."

Next, TITANIA affirms in its allegations:

"(...) we understand that none of the aggravating circumstances of the sanction proposal operate (...)

Article 83.2.a) of the RGPD: when disseminating only the voice of the victim, it does not is identifiable by the general public, but only by people who know it in person and belong to your closest circle who probably already had knowledge of the events narrated. Therefore, it is not "condemned again to be recognized by third parties" since third parties who do not know the victim they will be unable to identify it."

A response to this allegation has already been given in the legal basis III.

On the other hand, a person's environment is made up of different areas (family close, distant, educational/work, social,...) and in no way can it be deduced that all the people who make it up and are able to recognize the voice of that person, they have to previously know of their status as a victim. Also, such and as indicated in the legal basis IV, it is essential for the victim that they continue to ignore this circumstance.

The defendant asserts:

“Article 83.2.b) of the GDPR: There is no negligence on the part of TITANIA. The newspaper made a consideration before publication and decided, with all the grounds previously exposed, that the publication of the statement was necessary to provide the news with greater veracity, complying with higher standards of quality its informative purpose. The distortion of the voice would have lost this plus informative in which the reader can check first-hand the status of the victim and his account of the facts. In any case, TITANIA was diligent in not making

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allusion to any other information about the victim that could make her identifiable by a third that he did not know her.” (underlining is ours).

A response has already been given to the weighting carried out by the media prior to publication in the legal basis IV.

In relation to the degree of diligence that the data controller is obliged to to deploy in compliance with the obligations imposed by the regulations of data protection, you can cite the Judgment of the National Court of 17

October 2007 (rec. 63/2006), which indicates, in relation to entities whose activity involves continuous data processing, which: "(...) the Supreme Court comes understanding that imprudence exists whenever a legal duty of care, that is, when the offender does not behave with the required diligence. And in the assessment of the degree of diligence, professionalism must be especially weighted or not of the subject, and there is no doubt that, in the case now examined, when the The appellant's activity is constant and abundant handling of personal data. must insist on the rigor and exquisite care to adjust to the legal provisions in this regard.

The initiation agreement, in its Fundamentals of Law IX, indicated that the party claimed "was negligent in not ensuring a procedure that guaranteed the protection of personal data in such sensitive circumstances, especially when on many occasions the voice in the news is distorted in order to that the person speaking is not recognized", since we are referring to a woman (...) victim of a violent crime and against sexual integrity (multiple rape), putting her at certain risk of being identified by people unaware of her condition of victim, a risk that should have been assessed by means of communication, adopting some measure to neutralize it.

TITANIA highlights:

"Article 83.2.g) of the GDPR: the personal data affected (the voice) are not data of especially sensitive or protected category."

In order to understand the meaning in which this term was used in the Agreement beginning, the following paragraph of the same is reproduced:

"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.” (underlining is ours).

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As can be seen, in the start agreement reference is being made to the

weighting or weighing prior to the publication of the news.

In relation to this issue, Opinion 6/2014 of the Article 29 Working Group

considers it necessary, when carrying out said weighting, to analyze the

nature of the data. When carrying out the aforementioned analysis, it does not limit the concept of data

sensitive to those contemplated in article 8 of the Directive (current article 9 of the

GDPR) but refers to a broader concept of sensitive data, to the

state (emphasis added):

“First of all, it is important to assess whether the processing affects sensitive data,

either because they belong to the special categories of data under article 8 of

the Directive, either for other reasons, such as in the case of biometric data, the

genetic information, communication data, location data and other

of personal information that requires special protection.”

“In general, the more sensitive the information in question, the more consequences may have for the interested party.”

Although the voice is not sensitive data in accordance with article 9 of the GDPR, the fact of posting it, along with the information about the multiple rape trial, makes it easier to access to a second piece of information that can be considered sensitive according to the opinion of 6/2014 (the person to whom said voice belongs has been the victim of a violation of multiple).

Furthermore, a systematic and teleological interpretation of article 83.2.g) of the GDPR connects this precept with other classifications offered by the text of the RGPD that, in addition, better respond to the purpose pursued by the standard: to graduate in the individual case, the administrative fine to be imposed, respecting in any case the principles of proportionality and effectiveness.

In this sense, recitals 51 and 75 of the GDPR distinguish a group of data of personal data that, by their nature, are particularly sensitive because of the significant risk that they may entail, in the context of their treatment, for fundamental rights and freedoms. The common denominator of all of them is that their treatment involves a significant risk to the rights and freedoms of fundamental because it can cause physical, material or

immaterial. This group or category of particularly sensitive data includes the categories of specially protected data regulated by article 9 of the GDPR - recital 51 of the GDPR- and, in addition, many other data not regulated in that precept. Recital 75 mentions in detail the personal data whose

Treatment may carry a risk, of varying severity and likelihood, to the rights and freedoms of natural persons as a consequence of the fact that they can cause physical, material or immaterial damages. Among them he mentions

those whose treatment “could give rise to problems of discrimination, usurpation identity fraud or fraud, financial loss, damage to reputation, loss of confidentiality of data subject to professional secrecy, unauthorized reversal of the pseudonymization or any other significant economic or social damage;”.

Consequently, with the publication of the news, the rape was reported.

suffered by the victim, a circumstance related to his sexual life, whose

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knowledge from their environment, could have negative consequences for the

itself, as stated in the legal basis IV.

TITANIA in its allegations affirms that, in this case, a

series of mitigating circumstances:

"Art. 83.2 a)

(...) The voice is a piece of information that only identifies the person before the people who

known, so the seriousness of a possible infringement is mitigated by not being

identifiable by all those who access said information, thereby greatly limiting

the scope and scope of the offence.”

A response to this allegation has been given in the legal basis III. to what fits

add that, the publication of the undistorted voice has put the victim at risk

certain of being recognized as a victim of multiple rape. Said circumstance,

as it has been highlighted in the foundation of law IV, it has a serious impact

about their present and future life, making it much more difficult for the victim to recover

of the trauma suffered and can resume his life.

TITANIA alleges:

(...) the duration of the publication was just days, leaving no record of the  
itself in any newspaper library and being completely inaccessible.

The respondent party published the news on \*\*\*DATE.1 and, in its brief of \*\*\*DATE.6  
informed this Agency that the video had been withdrawn. Whereupon the video with  
the voice of the victim was available (...).

Bearing in mind that time is a relative concept, in the present case it is not

You can share the allegation that the content was published for a short time, since  
the video with the undistorted voice of the victim was published the same day that it took place  
the newsworthy fact, being available until the AEPD notified the party  
demanded a requirement, which shows that the measure of withdrawal of the  
content did not derive from a spontaneous action of the claimed party.

To this it should be added that, taking into account that the publication of the voice makes it easier for the  
victim is identified as such, it cannot be estimated that (...) it will be a short term,  
may be considered as an extenuating circumstance.

The defendant argues in its pleadings:

The article (...) received very few visits. According to Amplitude data -  
web and mobile analytics platform that provides access to the behavioral layer of  
user data-, the aforementioned article had 82% fewer views  
than another article on the same criminal matter in \*\*\*MES.1. In addition, it would have to  
assess, among those visits, which ones were really in a position to recognize the  
victim only through her voice.”

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The victim had been the object of a violent and sexual assault, which was had been carried out as a group. His life had been affected by deep physical and psychological sequelae, revealed during the trial, whose monitoring and dissemination carried out by the claimed party.

Starting from this point, and from the difficulty that the victims of this type of crimes to get your life back on track, it's hard to reduce the damage done to you. causes, by making it easier for it to be recognized by people around it, to a mere quantitative analysis. Is less harm done to her if she is identified as a victim by three people instead of if identified seven?

It depends on who it is, what is their degree of connection with it, how the relationship with her is affected when they learn that she has been the victim of a rape multiple, of the frequency with which he relates to those people, etc.... would suffice that a small group of people, or even a single person, would recognize the victim through the news so that his identity would be compromised and even spread to other people.

In conclusion, numerous qualitative elements come into play that escape a analysis from a purely quantitative perspective.

In the statement of allegations it is stated:

"The damages and losses suffered by the victim come from the horrific fact that he had to suffer, but it is not proven or substantiated, the damage suffered by the interested party with the publication exclusively of her voice, without identifying her in any other way."

A response to this allegation has been given in the legal foundations III and IV.

Next, TITANIA alleges as mitigating circumstances:

"- Art. 83.2.b) Intentionality or negligence in the infringement: has not existed on the part of TITANIA no intention of identifying the victim, although on the contrary, it has



estimated that the recording provided greater informative value to the news by preserving its identity."

In the Agreement of initiation it was highlighted:

"Although the Agency considers that there was no intention on the part of the means of communication, the Agency concludes that it was negligent in failing to secure a procedure that guarantees the protection of personal data in some such sensitive circumstances, especially when on many occasions the voice in the news so that the person speaking is not recognized." (he underlining is ours).

This Agency considers that there was no intention on the part of TITANIA, but it did negligence. Reference is made again to the content of the Judgment of the Hearing Nacional of October 17, 2007 (rec. 63/2006), previously reproduced.

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The claimed party understands that, in addition to those indicated in the preceding paragraphs, there are other extenuating circumstances:

"Art. 83.2.c) Any measure taken by the controller or processor

to alleviate the damages and losses suffered by the interested party: Without TITANIA being aware of the damages and losses actually suffered by the interested party publication of the recording, he withdrew it as soon as the AEPD urged him to do so.

"Art. 83.2. f) The degree of cooperation with the supervisory authority in order to put remedy the infringement and mitigate the possible adverse effects of the infringement: without recognize that there is an infringement, if the cooperation of TITANIA should be recognized

upon receipt of the Provisional Measure Adoption Agreement sent by the AEPD.”

It cannot be understood that the alleged extenuating circumstances concur.

Regarding the first, the measure to remove the content did not derive from a spontaneous action of the claimed party, but rather an urgent removal order and obligatory of the AEPD, for which reason it cannot be considered in the present case as a extenuating.

And in addition, the measures must be aimed at alleviating, in an effective way, the damages and damages suffered by the interested parties.

Regarding the second alleged, the degree of cooperation with the TITANTIA Agency cannot be considered a mitigation since the withdrawal orders that it issues are mandatory in accordance with the provisions of article 69 of the LOPDGDD. The consideration of cooperation with the Agency as a mitigation, as as the appellant claims, is not linked to any of the cases in which that there may be a collaboration or cooperation or requirement for the sake of a legal mandate, when the actions are due and required by law, as in the case at hand.

In its pleadings TITANIA highlights:

"-Art. 76.2.a) of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights. The continuing character of the infraction: we understand that non-commission can also be applied as a mitigation of more infractions by TITANIA." (underlining is ours).

In this sense, as regards the absence of antecedents of infractions committed previously, the Judgment of the National Court, of May 5, 2021, rec.

1437/2020, provides us with the answer: "It considers, on the other hand, that it should

The non-commission of a previous infraction can be appreciated as mitigating. well, the

Article 83.2 of the GDPR establishes that it must be taken into account for the imposition of the

administrative fine, among others, the circumstance "e) any previous offense committed by the person in charge or the person in charge of the treatment". It is a circumstance aggravating, the fact that the budget for its application does not meet entails that cannot be taken into consideration, but does not imply or allow, as it claims the plaintiff, its application as mitigation." (emphasis added).

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At the end of the pleadings Titania points out:

"In conclusion, we understand that the amount and aggravating circumstances indicated by the AEPD in the sanction proposal are not effective, nor proportionate, nor dissuasive, as required by the GDPR, (...)"

The assessment made by TITANIA is not shared, it has been responding to the same in the fundamentals of law II, III, IV and V, as well as in the rest of the legal foundations of this proposed resolution.

For all the foregoing, all the allegations made by the party are dismissed. claimed to the initiation agreement.

SAW

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 natural persons identified or identifiable>>, an issue that is not controversial."

Article 4.2 of the GDPR defines "processing" as: "any operation or set of 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.

## VII

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

In this sense, and regardless of the legal basis legitimizing the treatment, all 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.

## VIII

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".

IX

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 STC 27/2020, of February 24, 2020 (appeal of  
amparo 1369-2017) that provides, in relation to the image of a person, and

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starting from the incontrovertible fact that makes it identifiable, that "...the question  
discussed is reduced to pondering whether the non-consented reproduction of the image of a  
anonymous person, that is, someone who is not a public figure, but who acquires  
suddenly and involuntarily a role in the newsworthy event, in this case as  
victim of the failed attempted murder by his brother and the subsequent suicide  
of this, supposed an illegitimate interference in his fundamental right to his 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 STS, from its First Civil Chamber, 272/2011 of April 11, 2011 (rec. 1747/2008), in which, regarding the data necessary to provide a information and limits to the public interest states that "b) Trivial information is not protects (ATC 75/2006), but the fact of providing unnecessary data in a case of rape (full name, last name initials, street portal where the victim lived) that have no community relevance, do not respect the reservation, only

seek to satisfy curiosity, produce disturbances or annoyances, and reveal aspects of personal and private life unnecessarily, allowing neighbors, close people and relatives full identification of the victim and knowledge in great detail about an act that seriously violated his dignity (STC 185/2002) or about a disease that has no public interest and affects direct to the irreducible field of intimacy and that reveals itself to the effect of a pure joke or joke (STC 232/1993);”.

Likewise, the STS, of its First Civil Chamber, Judgment 661/2016 of 10 November 2016 (rec. 3318/2014), in relation to the recruitment and disclosure in court of the image of a victim of gender violence provided that "1.) The

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interest of the questioned information nor the right of the defendant television channel to broadcast images recorded during the act of the oral trial of the criminal case, since they did not. 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 example, the image of a natural person obtained from a photograph published in a social network or name and surname.

X

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 sensitive 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 very young woman who has suffered a multiple rape. In the published recording, she is heard recounting, with great emotional charge, the sexual assault suffered with all crudeness, (...).

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 the crime foresees a special need of protection to the victims of crimes against sexual freedom or sexual indemnity, as well as victims of violent crimes, both circumstances that concur in the alleged examined.

In this case, the situation of the victim 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

legal system that, without constraining the supply of information, must be done

compatible with the principle of data minimization, applicable to the form, the

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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 STJUE (Second Chamber) of February 14, 2019, in case C 345/17, Sergejs Buivids mentions various criteria to ponder 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 interested party, the content, the form and the repercussions of the publication, the way and the circumstances in which it was obtained information and its veracity (see, in this regard, the judgment of the ECtHR of 27 June 2017, Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland, CE:ECHR:2017:0627JUD000093113, section 165)".

In such a way that for a matter to be considered of general interest, public relevance, they will be 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 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 2019, the formation of a free public opinion does not require, nor justify, that the fundamental right to one's own image is affected [in this case to 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.

eleventh

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 particularly 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 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.

twelfth

Based on the available evidence, it is considered that the party claimed has processed data that was excessive as it was not necessary for the purpose for which they were treated.

The known facts could constitute an infringement, attributable to the party claimed, of article 5.1.c) of the GDPR, with the scope expressed in the

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Previous legal grounds, which, if confirmed, could mean the commission of the offense 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 in accordance with 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."

### XIII

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:

"1. Each control authority will guarantee that the imposition of fines administrative proceedings under this article for violations of this

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

effective, proportionate and dissuasive.”

"2. 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:

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

nature, scope or purpose of the processing operation in question

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

have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to

alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor,

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

of articles 25 and 32;

e) any previous infringement committed by the 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.  
personal information.

c) The benefits obtained as a consequence of the commission of the infraction.

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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 the present case, the following graduation criteria are considered concurrent:

- 

- 

Aggravating factors:

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

personal data to a person who has been the victim of a violent crime and against

sexual integrity and that by disseminating her personal data she is condemned again

to be recognized by third parties, causing serious damages.

- 

Article 83.2.b) of the GDPR.

Intentional or negligent infringement: Although it is considered that there was no

intentionality on the part of the communication medium, it is estimated that it was negligent in

not ensure a procedure that guarantees the protection of personal data

in such sensitive circumstances, especially when on many occasions

distorts the voice in the news so that the person is not recognized

talking.

- 

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.

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of article 5.1 c) of the GDPR, it allows setting a fine of 50,000 € (fifty thousand euros).

In view of the foregoing, the following is issued:

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#### PROPOSED RESOLUTION

FIRST: That by the Director of the Spanish Data Protection Agency sanction TITANIA COMPAÑÍA EDITORIAL, S.L., with NIF B82938572, for a infringement of Article 5.1.c) of the GDPR, typified in Article 83.5 a) of the GDPR, with a fine of €50,000 (fifty thousand euros).

SECOND: That by the Director of the Spanish Data Protection Agency confirm the following provisional measures imposed on TITANIA COMPAÑÍA EDITORIAL, S.L., with NIF B82938572:

- 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.

Likewise, in accordance with the provisions of article 85.2 of the LPACAP, you will be

informs that it may, at any time prior to the resolution of this

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

It will mean a reduction of 20% of the amount of the same. With the application of this

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

will imply the termination of the procedure. The effectiveness of this reduction will be

conditioned to the withdrawal or resignation of any action or appeal via

administrative against the sanction.

In case you choose to proceed to the voluntary payment of the specified amount

above, in accordance with the provisions of the aforementioned article 85.2, you must do it

effective by depositing it in the restricted account no. ES00 0000 0000 0000 0000

0000 open in the name of the Spanish Data Protection Agency in the entity

bank CAIXABANK, S.A., indicating in the concept the reference number of the

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

voluntary payment, reduction of the amount of the sanction. You must also send the

Proof of admission to the Sub-Directorate General of Inspection to proceed to close

The file.

By virtue of this, you are notified of the foregoing, and the procedure is revealed.

so that within TEN DAYS you can allege whatever you consider in your defense and

present the documents and information that it deems pertinent, in accordance with

Article 89.2 of the LPACAP.

R.R.R.

INSTRUCTOR

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EXHIBIT

04-08-2021 Claim of D.A.A.A.

05-10-2021 Claim of D.A.A.A.

05-12-2021 Admission for processing

05-13-2021 Urgent withdrawal order to TITANIA COMPAÑÍA EDITORIAL, SL

05-19-2021 Written by TITANIA COMPAÑÍA EDITORIAL, SL

01-24-2022 Report on previous investigation actions

05-03-2022 Agreement to open TITANIA COMPAÑÍA EDITORIAL, SL

05-04-2022 Information to D.A.A.A.

05-10-2022 Term extension request from TITANIA COMPAÑÍA EDITORIAL, SL

05-10-2022 Term Extension to TITANIA COMPAÑÍA EDITORIAL, SL

05-26-2022 Allegations by TITANIA COMPAÑÍA EDITORIAL, SL

A copy of the file is sent as an annex to this proposal.

As established in article 5.1 b) of EU Regulation 2016/679, the data

personal data in the file may not be used in an incompatible manner

regarding the purposes for which they were collected and processed. Therefore, only

may be used for the purposes that by law correspond to it by virtue of its

condition of interested

So that your claim does not impair other rights

deserving, equally, of protection, in the copy of the documentation sent by

This General Subdirectorate does not include documentation that could affect



public security, the prevention, investigation and punishment of criminal offences, administrative or disciplinary, economic and commercial interests, secrecy professional and intellectual and industrial property.

>>

SECOND: On November 1, 2022, the claimed party has proceeded to the payment of the penalty in the amount of 40,000 euros using the reduction provided for in the motion for a resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource in the against the sanction, in relation to the facts referred to in the resolution proposal.

#### FUNDAMENTALS OF LAW

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Yo

#### Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

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

processed by the Spanish 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

### Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature but the

inadmissibility of the second, the voluntary payment by the presumed perpetrator, in

any moment prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

The aforementioned reductions must be determined in the notification of initiation

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

any administrative action or resource against the sanction.

The percentage reduction provided for in this section may be increased

according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure PS/00200/2022, in

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

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SECOND: NOTIFY this resolution to TITANIA COMPAÑÍA EDITORIAL,

S.L.

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 as prescribed by

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

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

968-171022

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