

□ File No.: EXP202207424

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 October 21, 2022, the Director of the Spanish Agency for
Data Protection agreed to start a sanctioning procedure against CASAL DE
L'ESPLUGA DE FRANCOLÍ (hereinafter, the claimed party), through the Agreement
which is transcribed:

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File No.: EXP202207424

AGREEMENT TO START THE SANCTION PROCEDURE

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

FACTS

FIRST: Ms. A.A.A. (hereinafter the claimant) on 05/05/2022 filed
claim before the Spanish Data Protection Agency. The claim is
directed against CASAL DE L'ESPLUGA DE FRANCOLÍ with NIF G43027531 (hereinafter
the claimed). The reasons on which the claim is based are the following: The affected
She claims to be the mother of a girl (...) who denounces that in the Facebook profiles
and Instagram of the ***ACTIVIDAD.1 club against which a video was published
which shows a moment of a match played between that team and his daughter's. In
the images show the claimant's daughter, who says that they do not have
authorization to use the images of the minor and, that with the video, used to

show their disagreement with an arbitral decision, it violates the honor and girl's reputation

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (in forward LOPDGDD), said claim was transferred to the party claimed/ALIAS, to proceed with its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations

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Public (hereinafter, LPACAP) by electronic notification, was not collected by the person in charge, within the period of availability, understood as rejected in accordance with the provisions of art. 43.2 of the LPACAP dated 07/07/2022, as stated in the certificate in the file.

Although the notification was validly made by electronic means, assuming that carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, under information, a copy was sent by postal mail, which was duly notified in date 07/27/2022. In said notification, he was reminded of his obligation to relate electronically with the Administration, and they were informed of the means of access to said notifications, reiterating that, henceforth, he would be notified exclusively by electronic means.

THIRD: On 08/05/2022, in accordance with article 65 of the LOPDGDD,

The claim presented by the complaining party was admitted for processing.

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, 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 of Regulation (EU) 2016/679, in this organic law, for the

regulatory provisions dictated in its development and, as soon as they are not

contradict, on a subsidiary basis, by the general rules on the

administrative procedures."

II

The denounced facts materialize in that in the profiles of Facebook and

The defendant's Instagram has published a video showing a moment of a

match of ***ACTIVITY.1 in which the claimant's youngest daughter is seen, without

have the consent of their parent, considering that the

regulations on the protection of personal data.

Article 58 of the GDPR, Powers, states:

"2. Each supervisory authority shall have all the following powers

corrections listed below:

(...)

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i) impose an administrative fine in accordance with article 83, in addition to or in
instead of the measures mentioned in this paragraph, according to the
circumstances of each particular case;

(...)"

It should be noted that the physical image of a person, according to article 4.1
of the GDPR, it is personal data and its protection, therefore, is the subject of said
Regulation. Article 4.2 of the GDPR defines the concept of "processing" of
personal information.

It is, therefore, pertinent to analyze whether the processing of personal data (image
of natural persons) carried out through the filming of a video and its

Downloading on social networks is in accordance with the provisions of the GDPR.

Article 6, Legality of the treatment, of the GDPR in its section 1, establishes
that:

"1. Processing will only be lawful if at least one of the following is fulfilled
conditions:

a) the interested party gave his consent for the processing of his data
personal for one or more specific purposes;

b) the processing is necessary for the performance of a contract in which the
interested party or for the application at the request of this of measures

pre-contractual;

c) the processing is necessary for compliance with a legal obligation

applicable to the data controller;

d) the processing is necessary to protect vital interests of the data subject or

of another physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in

public interest or in the exercise of public powers conferred on the person responsible

of the treatment;

f) the processing is necessary for the satisfaction of legitimate interests

pursued by the data controller or by a third party, provided that

such interests are not overridden by the interests or the rights and freedoms

of the interested party that require the protection of personal data,

in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to the

treatment carried out by public authorities in the exercise of their functions”.

On the other hand, article 4 of the GDPR, Definitions, in its sections 1, 2 and 11,

notes that:

“1) “personal data” means any information about an identified natural person

or identifiable (“the data subject”); Any identifiable natural person shall be considered

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

by means of an identifier, such as a name, an identification number,

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

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physical, physiological, genetic, psychological, economic, cultural or social identity of said person;

"2) "processing": any operation or set of operations carried out on personal data or sets of personal data, either by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, deletion or destruction;

"11) "consent of the interested party": any manifestation of free will, specific, informed and unequivocal for which the interested party accepts, either through a statement or a clear affirmative action, the processing of personal data that concern him."

It should be noted that data processing requires the existence of a database

II

law that legitimizes it.

In accordance with article 6.1 of the GDPR, in addition to consent,

There are other possible bases that legitimize the processing of data without the need for have the authorization of its owner, in particular, when necessary for the execution of a contract in which the affected party is a party or for the application, upon request of this, of pre-contractual measures, or when necessary for the satisfaction of legitimate interests pursued by the controller or by a third party, provided that such interests do not prevail over the interests or rights and fundamental freedoms of the data subject that require the protection of such data. He treatment is also considered lawful when necessary for the fulfillment of a legal obligation applicable to the data controller, to protect interests

of the data subject or of another natural person or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers vested in the responsible for the treatment.

In the present case, there is no accredited basis of legitimacy for the treatment of the data of the minor daughter of the claimant, in relation to the publication on the Facebook and Instagram profiles of the defendant, of a video that captures the images of a match of ***ACTIVIDAD.1 where he participated the same.

IV.

The infringement attributed to the defendant is typified in the Article 83.5 a) of the GDPR, which considers that the infringement of "the basic principles for processing, including the conditions for consent under the terms of the Articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the aforementioned Article 83 of the aforementioned Regulation, "with administrative fines of €20,000,000 as maximum or, in the case of a company, of an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the one with the highest amount".

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The LOPDGDD in its article 71, Violations, states 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".

And in its article 72, it considers for the purposes of prescription, which are: "Infractions considered very serious:

1. Based on what is established in article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particular, the following:

(...)

b) The processing of personal data without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the

Regulation (EU) 2016/679.

(...)

In order to establish the administrative fine that should be imposed, the

observe the provisions contained in articles 83.1 and 83.2 of the GDPR, which

point out:

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"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, as an addition to or substitute for the measures contemplated

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

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

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

nature, scope or purpose of the processing operation in question

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infraction;

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 the person in charge of the

processing, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

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

treatment;

f) the degree of cooperation with the supervisory authority in order to put

remedy the breach and mitigate the potential adverse effects of the breach;

g) the categories of personal data affected by the infringement;

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h) the way in which the supervisory authority became aware of the infringement, in

particularly if the person in charge or the person in charge notified the infringement and, in such a case,

what extent;

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

previously ordered against the person in charge or in charge in question

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 the financial benefits obtained or the losses avoided, direct or indirectly, through the infringement.

In relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"2. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

- a) The continuing nature of the offence.
 - b) Linking the activity of the offender with the performance of processing of personal data.
 - c) The benefits obtained as a consequence of the commission of the infraction.
 - d) The possibility that the conduct of the affected party could have led to the commission of the offence.
 - e) The existence of a merger process by absorption after the commission of the infringement, 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) The submission by the person in charge or in charge, with character voluntary, alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested."
- data.

It is considered as an aggravating circumstance:

The category of personal data affected by the infringement; in

the processing operation has affected the data of minors,

subject to special protection.

- In accordance with the transcribed precepts, and without prejudice to what results from

the instruction of the procedure, in order to set the amount of the fine to impose in the present case for the infringement typified in article 83.5.a) and article 6.1 of the GDPR for which the defendant is held responsible, in an initial assessment, appropriate to establish a penalty of €5,000 (five thousand euros).

Therefore, according to what has been stated,

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By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1. INITIATE SANCTION PROCEDURE against CASAL DE L'ESPLUGA DE FRANCOLÍ, with NIF G43027531 for the alleged violation of 6.1 of the GDPR, typified in article 83.5.a) of the aforementioned GDPR.
2. APPOINT Instructor to B.B.B. and Secretary to C.C.C., indicating that any of them may be challenged, if applicable, in accordance with the provisions of articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP).
3. INCLUDE the claim in the disciplinary file, for evidentiary purposes.
filed by the claimant and their documentation, the documents obtained and generated by the Inspection Services; documents, all of which make up the proceedings.
4. THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of October 1 and article 58.2.b) of the RGPD, the sanction that could correspond for the violation of the Article 6.1 of the GDPR would be €5,000 (five thousand euros), without prejudice to what is

of the instruction.

5. NOTIFY this Agreement to CASAL DE L'ESPLUGA DE FRANCOLÍ, with NIF G43027531, expressly indicating your right to a hearing in the procedure and granting him a period of TEN BUSINESS DAYS to formulate the allegations and propose the evidence that you consider appropriate. In his statement of pleadings You must provide your NIF and the procedure number that appears in the heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, the It may be considered a resolution proposal, as established in the Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Common for Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event of that the sanction to be imposed is a fine, it may recognize its responsibility within of the term granted for the formulation of allegations to the present initiation agreement; it which will entail a reduction of 20% of the sanction that should be imposed in the present procedure. With the application of this reduction, the sanction would be established at 4,000 euros, resolving the procedure with the imposition of this sanction.

In the same way, it may, at any time prior to the resolution of the present procedure, carry out the voluntary payment of the proposed sanction, which which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 4,000 euros and its payment will imply the completion of the procedure.

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The reduction for the voluntary payment of the penalty is cumulative to that corresponds to apply for the recognition of responsibility, provided that this acknowledgment of responsibility is revealed within the term granted to formulate allegations at the opening of the procedure. The pay voluntary payment of the amount referred to in the preceding paragraph may be made at any time before resolution. In this case, if it were appropriate to apply both reductions, the amount of the sanction would be established at 3,000 euros.

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above (4,000 or 3,000 euros), you must make it effective by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened to name of the Spanish Data Protection Agency at CAIXABANK Bank, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for reducing the amount to which welcomes.

Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the start agreement or, where appropriate, the start agreement project. After this period, its expiration will occur and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On November 24, 2022, the claimed party has proceeded to the payment of the penalty in the amount of 3000 euros making use of the two reductions provided for in the initiation Agreement transcribed above, which implies the recognition of responsibility.

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

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the opening of the procedure, entails the waiver of any action or appeal via against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

FUNDAMENTALS OF LAW

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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."

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According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202207424, in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to CASAL DE L'ESPLUGA DE FRANCOLI.

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

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