No. Fac.: 11.17.001.009.246 May 11, 2022 DUPLICATED AND BY ELECTRONIC MAIL Decision Publication of photographic and audio-visual material of a minor on a Social Networking Media A. Incidents of the Case 1. On November 3, 2021, a complaint was submitted to my Office by XXXXX (hereinafter the "complainant"), regarding the publication of photographic and audio-visual material involving his minor son, XXXXXX, on Social Media by XXXXXX (hereinafter the "Professor"). 2. On October 30, 2021, the U18 All-Cyprus Games, i.e. for persons under the age of eighteen, were organized at Eleftheria Stadium under the auspices of the All-Cyprus Judo Federation. 3. As stated in the complaint, in a match in which the complainant's son participated, against an opponent athlete of the Association whose coach is the Defendant, the latter, due to disagreements with the decisions of the referee in relation to a disputed phase, proceeded to collecting and posting a related video with the match of the two minor athletes, on a social media (Facebook), without prior knowledge of the complainant. Along with the posting of the video in question, there was also the comment "XXXXXX" and underneath there were some comments from his Facebook friends. 4. On 16 November 2021, my Office sent a letter to the complainant stating that because the judo matches in question were Pan-Cypriot and apparently related to a public event, one would not expect the same level of protection of their personal data. Of course, this would not be the case if it were a single intramural sporting event. With regard to the comments of the match, although they are not the subject of securing the permission of my Office, we had stated that they do not constitute a violation of personal data. 5. After the telephone communication the complainant had with an Officer of my Office in the context of clarifications, the complainant sent additional information to my Office on November 17, 2021, which was not initially attached to the complaint. Specifically, the complainant sent: 5.1 The letter dated June 05, 2018 to the Pancypriot Judo Federation (hereinafter the "Federation") from the XXXXX law firm, which represented the judo academy "XXXXXX" (hereinafter the "Association"), in which the complainant's son is a student. In the said letter, the Union appealed to the Federation to communicate the letter to all Members of the Federation. According to the letter, it came to the attention of the customers of the Association that photographs and videos of the Association's athletes were being published on various social media (Facebook, Instagram, etc.), without the prior consent of the athletes and/or their guardians and/or the Union. He considered that the action in question constituted a violation of the right to protect the personal data of the athletes. Therefore, he requested, as before publishing any photographic or audio-visual material that includes an athlete of the Association, to address it, so as to ensure the relevant consent of the athlete and/or his guardian. 5.2 The above letter was communicated by email, dated June 06, 2018, from the Federation to its members, stating the following: "Please take seriously the letter from the

XXXXXX union regarding the personal data of its athletes. The following letter concerns the Unions." 5.2.1 The recipients of the message in question included the e-mail address XXXXXX. 5.3 Letter dated 01 November 2021 from the complainant's lawyer to the Professor (with the Professor's email address on XXXXXX), where he reported the incident, i.e. the posting of the match in question between the complainant's son and one of the Professor's students th in a Social Media, without consent as requested through the letter referred to in paragraph 5.1 hereof. In said letter, the lawyer reserved his client's legal rights. 5.4 The same email address (XXXXXX), was found in a search conducted by an Officer of my Office on the internet, next to the Professor's name, on the website of the Pancypriot Judo Federation (XXXXXX). 6. On December 13, 2021, based on my duty to examine complaints, pursuant to Article 57(1)(f) of the Regulation, two 2 letters were sent on my behalf, one to the Federation at the email address XXXXXX and one to Accordingly, at the electronic address 6.1 The Defendant, through the letter from my Office, received information about the complaint in question and was asked, as such, until December 31, 2021, to inform me regarding the complainant. allegations his positions, on the 6.2 The Federation, after being informed in writing about the complaint, was asked to inform my Office by December 31, 2021 regarding the following: 6.2.1 whether the Federation has a policy regarding the publication of photographic and audio-visual material from the unions that belong to it, 6.2.2 if there really is a policy, how the said policy came to the knowledge of the unions, 6.2.3 if there are circulars, announcements that the Federation sent to the unions that belong there, 6.2.4 what measures it has taken to fully harmonize it with the Regulation and whether these measures have been adopted by the unions and to what extent, 6.2.5 whether it has received a complaint from the union in question and if so, what is the decision in which resulted, 6.2.5 anything else deemed appropriate. 7. On January 25, 2022 and February 8, 2022, my Office received an email from the complainant requesting an update on the progress of the complaint. My Office responded on the same day in the first case and on February 11, 2022 in the second, informing the complainant of the progress of the complaint. 8. On January 25, 2022, a reminder email was also sent to both the Federation and the Defendant, with an exclusive response deadline of February 2, 2022. Failing which, my Office would proceed with the investigation of complaint, with all the data he had before him until that moment. My Office holds a relevant electronic confirmation of the successful sending of the letters in question. Furthermore, an employee of my Office had a telephone conversation with the son of the Defendant, who stated that his father was aware of the specific case. The telephone communication was made with the son of the Defendant, since this was the contact phone number notified to my Office by the complainant, as the contact phone number of the Defendant. In the context of investigating the said complaint, it

also became clear that the number that had been given to us is also publicly posted on the Professor's personal page on Facebook, for the purposes of registering new athletes. 3 9. The e-mail address of the Defendant, which was communicated to my Office by the complainant through his complaint form, was psipspspsps. 9.1 due e-mail address: In the context of the investigation of the complaint in question, it was found that the one in 9.1.1 is also in the membership register ("full members club") of the website of the Federation (https://www.cyprusjudo.com/full- member-clubs/), as the email address to contact XXXXXX, whose head coach is XXXXXX. 9.1.2 also exists on the Facebook page of "XXXXXX" in which there are photos depicting XXXXXX and the emblem of XXXXXX, as it is listed on the website of the Federation. 10. On March 29, 2022, the prima facie Decision of my Office was sent to the Defendant to the e-mail address TTTTTTTT with notification to the e-mail address XXXXXX, by which I had concluded that there was a prima facie violation of Article 31 and Article 6 (1)(a) of the Regulation, since the Defendant had not cooperated with my Office by formulating his positions on the matter, as he had been requested until that moment and since he had not secured the prior consent of his father athlete who was depicted in the video he had posted on MKD, as the "instructions" of the Federation. I have asked the Defendant to submit his positions in writing to my Office and to state the reasons why he considers that there are no grounds for the imposition of any sanction and/or any mitigating factors, before I proceed to issue my Final Decision. 11. On April 12, 2022, the Professor, using the e-mail address XXXXXX, sent his response to my Office, stating the following: "Regarding the above matter which was also discussed in the Federation, the relevant video already it was removed and as we were told by the union, the matter ended. We never mentioned an athlete's name or showed a face. The children who  sports are exposed through matches with spectators and photos and videos and they know it. Referee decisions are discussed by many factors. And the disputed phases in the Arbitration seminars. I respect the decision and declare responsibly that it was not our intention to insult the athlete but to deprive the other child of Victory and the medal. I have been an athlete for many years, I have won medals in foreign competitions, I have competed in the Seoul Olympics and World Mediterraneans, etc. I have been for many years a Federation Coach and Trainer XXXXX holder of XXXXX DAN of the World Federation and I am still going. I know the psychology of athletes and especially athletes who are wronged usually leave the sport. Your final decision is fully respected." 4 B. Legal Framework 12. Article 4(1) of the Regulation defines that "personal data" is "any information concerning an identified or identifiable natural person ("data subject"); an identifiable natural person is one whose identity can be ascertained, directly or indirectly, in particular by reference to an identifier such as a name, an identity number, location data, an online identifier or

one or more factors specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of the natural person in question". 13. In Article 4(2) of the Regulation, processing is defined as "any act or series of acts carried out with or without the use of automated means, on personal data or sets of personal data, such as the collection, registration, organization , structuring, storing, adapting or altering, retrieving, searching for information, using, communicating by transmission, dissemination or any other form of making available, association or combination, restriction, deletion or destruction ",". 14. Furthermore, in Article 4(7) of the Regulation, a data controller is defined as anyone (the natural or legal person, public authority, agency or other entity) who, "alone or jointly with another, determine the purposes and the manner of the processing of personal data". 15. Article 4(11) provides that consent means "any indication of will, free, specific, express and fully informed, by which the data subject manifests that he agrees, by statement or by a clear positive action, to be the subject of processing the personal data concerning it". 16. Article 6 of the Regulation states that: "1. The processing is lawful only if and as long as at least one of the following conditions applies: a) the data subject has consented to the processing of his personal data for one or more specific purposes, b) the processing is necessary for the performance of a contract whose the data subject is a contracting party or to take measures at the request of the data subject prior to the conclusion of a contract, c) the processing is necessary to comply with a legal obligation of the controller, d) the processing is necessary to preserve vital interest of the data subject or other natural person, 5 e) the processing is necessary for the fulfillment of a task performed in the public interest or in the exercise of a public authority delegated to the controller, f) the processing is necessary for the purposes of the legal interests pursued by the controller or a third party, unless these interests are overridden by the interest or the fundamental rights and freedoms of the data subject that require the protection of personal data, in particular if the data subject is a child. Item f) of the first paragraph does not apply to the processing carried out by public authorities in the exercise of their duties." 17. With regard to Social Media, recital (18) of the Regulation clarifies that: "(18) This regulation does not apply to the processing of personal data by a natural person in the context of exclusively personal or domestic activity and therefore without connection with some professional or commercial activity. Personal or household activities could include correspondence and address record keeping or social networking and online activity conducted in connection with such activities. However, this Regulation shall apply to controllers or processors who provide the means of processing personal data for such personal or household activities." 17.1 Likewise, in Article 2(2)(c) of the Regulation, it is clarified that: "2. This regulation does not apply to the processing of personal data: c) by a natural person in

the context of exclusively personal or domestic activity," 18. However, according to Jurisprudence which has developed around this issue (see Decision dated 16/12/ 2008, Satakunnan Markkinapörssi and Satamedia) personal or household activity does not include processing which is exposed to an unspecified number of persons. Article 31 of the Regulation provides that, "the controller and 19. the processor and, as the case may be, their representatives cooperate, upon request, with the supervisory authority for the exercise of its duties.". 20. Based on Article 58(2), the Commissioner has all the following corrective powers: "a) to issue warnings to the controller or processor that intended processing operations are likely to violate the provisions of this regulation, b) to addresses reprimands to the data controller or the processor when processing operations have violated provisions of this regulation, 6 c) to instruct the data controller or the processor to comply with the requests of the data subject for the exercise of his rights according to with this regulation, d) to instruct the data controller or the processor to make the processing operations conform to the provisions of this regulation, if necessary, in a specific way and within a certain period, e) to instruct the data controller to announce the personal data breach ha character to the data subject, f) to impose a temporary or definitive restriction, including the prohibition of processing, g) to order the correction or deletion of personal data or the restriction of processing pursuant to articles 16, 17 and 18 and an order to notify these actions to recipients to whom personal data has been disclosed pursuant to Article 17(2) and Article 19, h) withdraw the certification or order the certification body to withdraw a certificate issued in accordance with Articles 42 and 43 or order the certification body not to issue a certification, if the certification requirements are not met or no longer met, i) to impose an administrative fine pursuant to article 83, in addition to or instead of the measures referred to in this paragraph, depending on the circumstances of each individual case, j) to give order to suspend the circulation of data to a recipient in a third country or p an international organization." 21. Furthermore, Article 83 of the Regulation, which concerns the general conditions for imposing administrative fines, provides, among other things, that: "1. Each supervisory authority shall ensure that the imposition of administrative fines in accordance with this article against violations of this regulation referred to in paragraphs 4, 5 and 6 is effective, proportionate and dissuasive in each individual case. 2. Administrative fines, depending on the circumstances of each individual case, are imposed in addition to or instead of the measures referred to in Article 58 paragraph 2 points a) to h) and Article 58 paragraph 2 point j). When deciding on the imposition of an administrative fine, as well as on the amount of the administrative fine for each individual case, the following shall be duly taken into account: a) the nature, gravity and duration of the infringement, taking into account the nature, extent or purpose of the relevant processing, as well as the number of data subjects affected by the breach and the

degree of damage they suffered, b) the fraud or negligence that caused the breach, 7 c) any actions taken by the controller or the processor to mitigate the damage suffered by the data subjects, d) the degree of responsibility of the data controller or processor, taking into account the technical and organizational measures they apply pursuant to articles 25 and 32, e) any relevant previous violations of the data controller or processor,f) the degree of cooperation with the supervisory authority to remedy the breach and limit its possible adverse effects, g) the categories of personal data affected by the breach, h) the way in which the supervisory authority was informed of the breach, in particular if and to what extent the data controller or processor notified the violation, i) in case the measures referred to in Article 58 paragraph 2 were previously ordered against the data controller or processor involved in relation to the same object, compliance with said measures, j) adherence to approved codes of conduct in accordance with Article 40 or approved certification mechanisms in accordance with Article 42 and k) any other aggravating or mitigating factor resulting from the circumstances of the specific case, such as financial benefits obtained or damages avoided, directly or indirectly, from the infringement.' C. Rationale 22. The collection and posting by the Professor, of a relevant video concerning a fight between one of his students and the complainant's son, on a social media (Facebook) was done without the Professor having previously secured the consent of the father of the minor, i.e. the complainant, as were the "instructions" of the Federation. It should be mentioned here that according to the letter dated June 5, 2018, NKD users are first urged to submit to obtain consent from the athletes, and/or guardians and/or the Association (separately), while subsequently they are urged to submit to the Association, in order to ensure the relevant consent of the athlete and /or his guardian. It should be said that the Association itself cannot give consent for the processing of the athlete's personal data, but indeed the correct procedure would be for them, as an intermediary, to obtain the relevant consent on behalf of the athlete . 22.1 The compilation and posting of the video in question together with the comment of the Professor, clearly states that the student XXXXX is one of the two athletes who are seen competing in the video in question. The specific match 8 was held within the framework of the Pancypriot Judo U18 Games and concerns a public event whose schedule of matches and the date of the event were widely known and/or accessible. 22.2 One could by successive actions such as for example the search of the official program of the matches from the website of the Federation (https://www.cyprusjudo.com/), identify the rival athlete i.e. the son of the complainant. 22.3 I recall my original point in relation to the judo matches in question being Pan-Cypriot and obviously a public event where one would not expect the same level of privacy protection, which in any event still applies. 22.4 From the evidence submitted before me, it appeared that the Federation had invited its members by

e-mail dated June 6, 2018, as they take into serious consideration the letter from the XXXXXX Association (point 5.2), in which it was stated that associations that would publish any material with personal data of athletes in NKD, should have secured the consent of the athletes in advance and/ or the guardians of said athletes. 22.5 The e-mail address XXXXXX to which the said e-mail was sent by the Federation, in combination with points 5.2.1, 5.3, 5.4 and 11 above, lead to the conclusion that on the one hand the union where the Professor works and on the other hand, the Defendant himself became aware of the content of the Federation's e-mail dated 6 June 2018. 22.6 The email address used by my Office to send its correspondence was based on points 9, 9.1.1 and 9.1.2 as described in the facts of the case. The Professor did not deny the answer of the date. April 12, 2022 that he received the correspondence sent to him by my Office and/or the Federation. Therefore, I consider that the Professor received both the letter from my Office dated December 13, 2021 (since there is also a relevant electronic confirmation of successful dispatch, as well as telephone communication with the son of the Defendant, who confirmed his father's knowledge in relation to the incident), as well as the Federation's letter dated June 6, 2018. 23. Based on Article 4(2) and 4(7) of the Regulation, the Defendant acted as a controller and processed personal data relating to the complainant's son, when he collected and posted the said Facebook video. The posting was open and accessible to the entire public and the Defendant, as a professional coach of a club involved in the sport of judo, has a direct connection to some professional activity (see recital (18)). The Defendant had not secured the prior consent of the father of the athlete depicted in the video before posting him on the MCD (Article 6(1)(a) of the Regulation). 9 24. The Defendant in his reply letter dated April 12, 2022, he reported that the relevant video was removed and as he was told by the Union, the issue has ended. He also stated that no athlete's name was mentioned nor did he show a face. As I have explained above, the identification of the athlete could be carried out with further actions that someone wanted to take. According to the interpretation given in Article 4(1) of the Regulation, an identifiable person is one whose identity can be ascertained, directly or indirectly. Therefore, it is not necessary to identify it directly, but it is sufficient for the identification to be carried out indirectly, so that it falls under the interpretation given by the Regulation. Furthermore, the Association is not competent to represent the athlete in relation to the issue of consent to the processing of his personal data or not. The only person who could end the matter is the athlete himself and/or his guardian. However, the removal of the video from the MKD is taken into account. 24.1 In relation to the position of the Professor that the children who play sports are exposed to matches with spectators and photos and videos and they know it, I should mention that this is correct, that is why the original letter dated November 16, 2021 to the complainant. However, the

complainant subsequently provided my Office with evidence proving that a matter had been raised with the Federation and that the Federation had forwarded a relevant letter to all its Members, according to which the athletes' prior consent should have been obtained or /and their guardians, for posts by Members of the Federation that contain photos or videos with athletes of the XXXXXX Association in MKD. The Defendant is not just any ordinary spectator, but a Member of the Federation and a professional coach of the club in which he works and who was bound by the relevant instructions. There is a connection between his actions and his professional status. Therefore, the exceptions of the Regulation do not apply, as regards the use of NQD for domestic use. Additionally, the Defendant's posting was open to the public, and this is an additional factor to be taken into account, according to relevant case law. 24.2 The reference by the Defendant that the decisions of the arbitrators and the disputed phases are discussed by various actors in the arbitration seminars, does not justify their discussion in the NQD. Each controller (MME, arbitration seminar manager, etc.) is judged on the legality of a processing in the light of its own purposes, legal basis and relevant jurisprudence. Each case is different and is always judged based on its own circumstances (case by case). 25. Based on Article 31 of the Regulation, the Defendant, acting as data controller, should cooperate with my Office by formulating his positions on the matter, as requested in my letter dated December 13, 2021, which he did not do initially, despite the reminder that was sent to him on January 25, 2022. Although in my prima facie Decision dated March 29, 2022, I had determined that the Defendant had not cooperated with my Office, however, since the Defendant has responded on April 12, 2022, I do not believe that this violation still exists and therefore will not take into account 10 26. Bearing in mind the facts concerning the case under investigation, as they have developed today, after the Defendant's response to the complaint, I find a violation of Article 6(1)(a) of the Regulation, since the Defendant he should have obtained the prior consent of the athlete's father, before publishing his video on MCD and he did not have any other legal basis to justify said posting. D. Conclusion 27. Bearing in mind the above and based on the powers granted to me byArticles 58 and 83 of Regulation (EU) 2016/679, article 24(b) of the Law

125(I)/2018, I repeat my finding of a violation on the part of

Regarding the complaint:

(a) of Article 6(1)(a) of the Regulation, since he had not received the relevant one

consent of the athlete and/or his guardian, before posting a relevant video

in which the athlete was included, in MKD.

28. Based on the provisions of Article 83 of the GDPR, insofar as they

apply in this particular case, I consider them below

mitigating (1-7) factors:

(1) The breach concerned only one data subject, which although

minor, due to his status as an athlete who competes in public and

is exposed to the public, I will not consider it as an aggravating factor

in the present case.

(2) There does not appear to have been any fraud or negligence. The Professor stated

that he did not intend to offend the athlete. Its purpose was to project

the contested phase which deprived the opposing athlete of victory.

(3) The Defendant removed the disputed video, i.e. took further actions

so as to mitigate the damage suffered by the data subject,

before it was even pointed out to him by my Office.

(4) The non-existence of previous violations of the Defendant.

(5) His cooperation with the Supervisory Authority, if even before the issue

final decision put his position,

(6) The category of data affected by the breach. It's not about you

sensitive data. I also repeat that the subject of

data due to his status as an athlete who competes in

public matches, he exposes himself to the public.

(7) No financial benefit was obtained from the Defendant.

29. Having considered and considered –

(a) My reasoning and conclusion in this Decision,

(b) The applicable legislative basis regarding the prescribed administrative

sanctions,

(c) All the circumstances and factors that the Complainant set forth

in front of me,

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I consider that the imposition of an administrative fine is not justified under the circumstances.

However, I address in accordance with the provisions of Article 58(2)(b) Reprimand

to the Defendant the complaint, in relation to the act in which it was carried out and

which resulted in a violation of the provisions of Regulation 2016/679.

This Decision can be considered as a precedent in the case

repetition of a similar violation by the Complainant.

Irini Loïzidou Nikolaidou

Data Protection Commissioner

Personal Character

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