

Procedure No.: PS/00213/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00213/2019, instructed by the Spanish Agency for Data Protection, to the entity LOS NIÑOS DE MONTESSORI S.L., with NIF B88155734 (www.montessoritrescantos.com), (hereinafter "the claimed entity"), for alleged violation of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of Natural Persons in what regarding the Processing of Personal Data and the Free Circulation of these Data (RGPD), and based on the following,

BACKGROUND

FIRST: dated 01/17/19, Ms. A.A.A., (hereinafter, "the claimant") files written before the Spanish Agency for Data Protection, in which, among others, it indicates: he started "Since the website of <http://www.montessoritrescantos.com> in June 2018, it is being breached with the data protection law: - The user's data is requested by filling in a contact form, but acceptance of the protection law is not requested of data. In the section: <http://www.montessoritrescantos.com/contacto/>.

SECOND: In view of the facts set forth in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out actions for its clarification, under the powers of investigation granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD). A) Yes,

dated 03/01/19 and 03/20/19, an information request is addressed to the entity claimed.

According to a certificate from the Electronic Notifications and Electronic Address Service Enabled, the request made through Notific@, dated 03/01/19, was rejected on 03/12/19.

According to a certificate from the Correos Postal Service, the request made, through SICER, dated 03/20/19, was returned to origin on 03/27/19, with the annotation of "absent" and "not collected from the Correos list service".

THIRD: Checked the website www.montessoritrescantos.com, dated 08/23/19, it is observed that, both to reserve a place and to get in contact with the institution "Montessori Tres Cantos", you must enter the data personal of: "name, email and telephone", not existing any type of banner or link to the "privacy policy" of the institution, where it is reported what treatment it makes of the personal data collected through the forms.

FOURTH: Dated 09/06/19, not having received any type of information by part of the requested person, the Director of the Spanish Agency for the Protection of Data agreed to initiate sanctioning proceedings against the defendant, by virtue of the www.aepd.es

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powers established in art. 58.2 of the RGPD and in articles 47, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD), for the infringement of article 13 of the RGPD and considered very serious in 72.1.h) of the LOPDGDD for prescription purposes,

setting an initial sanction of warning, without prejudice to what would result in course of the instruction of the procedure, arguing it, essentially in that: "on the website of the entity (www.montessoritrescantos.com), there is no no reference to the regulations on the protection of personal data".

FIFTH: According to a certificate from the Electronic Notifications Service and Address Electronic Enabled, the request made through Notific@, dated 09/09/19, was rejected on 09/20/19.

The entity claimed has not submitted to this Agency, any brief or allegation, within the period granted for this purpose.

PROVEN FACTS

1.- On the website www.montessoritrescantos.com, of the entity "Los Niños de Montessori", both to reserve a place and to get in touch with the institution, personal data must be entered, such as name, email electronic and telephone, there being no type of banner or link to the "policy of privacy" of the institution.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

II

Sections 1) and 2), of article 58 of the RGPD, list, respectively, the investigative and corrective powers that the supervisory authority may provide to the effect, mentioning in point 1.d), that of: "notifying the person in charge or in charge of the

treatment of alleged infringements of these Regulations” and in 2.i), that of:

“impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case.”.

In the present case, it has been found that, on the website, of the entity "Los Montessori children", both to reserve a place and to contact contact with the institution, personal data must be entered, such as the name, the email and telephone, there being no type of banner or link to the “policy of privacy” of the institution.

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All of the above could imply an infraction for violation of article 13) of the RGPD, considered in article 72.1.h), of the LOPDGDD as "very serious" to prescription effects.

III

This infraction can be sanctioned with a maximum fine of €20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the of greater amount, in accordance with article 83.5.a) of the RGPD.

The sanction to be imposed must be graded according to the criteria established article 83.2 of the RGPD, and with recital 148 of the RGPD itself, which provides for the possibility of punishing with a warning in certain circumstances.

In view of the aforementioned precepts and others of general application, the Director of the Agency

Spanish Data Protection RESOLVES:

NOTICE: to the entity LOS NIÑOS DE MONTESSORI SL., for infraction of the article 13 of the RGPD, typified in Article 83.5 of the RGPD.

REQUEST: to the entity LOS NIÑOS DE MONTESSORI SL., so that, within the term of one month from this act of notification, proceed to enter on your website (www.montessoritrescantos.com), a banner or link to the "privacy policy", where be informed about the processing of the personal data collected through your Web page.

NOTIFY this resolution to the entity LOS NIÑOS DE MONTESSORI SL.

In accordance with the provisions of article 50 of the LOPDPGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

LOPDPGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

counting from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

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Director of the Spanish Data Protection Agency

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