

Procedure No.: PS/00089/2019

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before the ASSOCIATION OF MOTHERS AND PARENTS OF THE MARÍA BLANCHARD SCHOOL, (in hereinafter, the claimed party) by virtue of a claim filed by A.A.A. (hereinafter, the claimant) based on the following:

BACKGROUND

FIRST: On June 18, 2018, the claimant filed a claim with the Spanish Data Protection Agency. The claim is directed against the defendant because without their consent, they have taken photographs of their children, in order to market some calendars, contravening article 6.1.a) in relation to article 8 of the RGPD, since he had only given consent to the school.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carrying out preliminary investigative actions to clarify the facts in question, by virtue of the investigative powers granted to the authorities of control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGPD), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of Organic Law 3/2018, of December 5, of Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is found that the data controller is the claimed party.

In addition, the following extremes are noted:

The respondent states that he has never received opposition to take the

photographs indicated, however, after learning of this claim, we have proceeded to remove the photos.

THIRD: On March 21, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 6.1 of the RGPD in relation to article 8 of the RGPD, of in accordance with the provisions of article 58 section 2 of the RGPD.

FOURTH: On April 5, 2019, the respondent presents allegations to the present sanctioning procedure indicating the following:

“For the 2018-2019 school year and subsequent ones, it has been decided to incorporate a series of improvements that allow to strictly comply with the Protection Regulation of Data, avoiding any interpretation error, or lack of information for all the entities involved.

Consequently, the defendant, in his desire to comply with current legislation, has implemented for the 2018-2019 school year a system in accordance with the new Regulation of Data Protection, to avoid situations similar to those that occurred.

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This system consists of the following forms:

Annex 1: Informative clause model to collect data linked to services or extracurricular activities provided by the center.

Annex 2: Model to exercise the right of access.

Annex 3: Model to exercise the right of rectification.

Annex 4: Model to exercise the right of cancellation.

Annex 5: Model to exercise the right of opposition.

Annex 6: Model to exercise the right of portability.

The aforementioned annexes were provided by this party to the AEPD, as consequence of the request for information received in S/REF: E/03942/2018, and are of obligatory completion by the families that proceed to associate, to fully comply with current legislation regarding data protection.

Likewise, on the bulletin board of the claimed site in the school, proceeded to the placement of the poster where the families are informed of the start date of the term for the incorporation as partners of the claimed for the current school year 2018-2019, as well as expressly informing them of the obligation on their part of completing the aforementioned documentation (cited document was also provided for this part to the AEPD, by means of a letter dated September 14, 2018).

Finally, and in relation to the specific problem that arose with the calendars schoolchildren prepared by the respondent, we must communicate that in the present course school, the respondent has already proceeded to request the express consent of the parents/guardians of minors in order to have their authorization, both for the obtaining, as for the use for this purpose of the image of minors.

Attached is the circular sent to that effect.

It also manifests the lack of will and knowledge on the part of the claimed of being in the development of its activity, committing an infraction of the regulations data protection, lacking specific knowledge in this regard, which already has been corrected, with special emphasis on scrupulous compliance with the so that a situation like this does not happen again.

Likewise, to show that this party, as already proven before the AEPD, managed to reliably notify the complainant on October 25, 2018 the decision adopted by the defendant as the previous one was unsuccessful communication sent to the same dated June 6, 2018.

As stated, it has been duly informed of the new system used by the claimed party in accordance with the Data Protection Regulations staff, reiterating to the claimant, that except for express signed consent on his part by filling in the corresponding form for this purpose, no use by the claimed the images of their children in any of the activities managed by it."

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In view of everything that has been done, by the Spanish Agency for the Protection of Data in this procedure are considered proven facts the following,

FACTS

FIRST: The respondent has taken photographs of the claimant's children, in order to market some calendars, contravening article 6.1.a) in relation to article 8 of the RGPD, since he had only given consent to the school

SECOND: The claimant manifests the lack of will and knowledge of being committing an infringement of the data protection regulations, lacking the specific knowledge in this regard, which has already been corrected, making special emphasis on scrupulous compliance with it, so that it does not happen again. cause a situation like this.

It is also stated that this was communicated to the claimant on 10/25/2018.

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 arts. 47 and 48.1 of the LOPDPGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this process.

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the processing of personal data, specifically in section 1.a) it is indicated that

The processing of personal data will be understood as lawful if they gave their consent.

In this sense, and in application to the present case, where the right to protection of the image of minors, note that article 8 of the RGPD regulates the conditions applicable to the consent of the child in relation to the services of the information society, stating that:

“1- When article 6, section 1, letter a) is applied in relation to the offer directly to children of services of the information society, the processing of data personal property of a child shall be considered lawful when he or she is at least 16 years old. If the child is under 16 years of age, such treatment will only be considered lawful if the consent

It was given or authorized by the holder of parental authority or guardianship over the child, and only to the extent that was given or authorized.

Member States may establish by law a lower age for such purposes, provided that this is not less than 13 years.

2. The controller will make reasonable efforts to verify in such cases in which the consent was given or authorized by the holder of parental authority or guardianship over the child, taking into account the available technology.

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3. Paragraph 1 shall not affect the general provisions of contract law of the Member States, such as the rules relating to the validity, formation or effects of contracts in relation to a child.”

Therefore, for the processing of the personal data of the

minors who are the object of this case, the consent of the person who holds their country will be required.

power or guardianship.

III

According to the evidence currently available,

and without prejudice to what results from the investigation, the known facts could be

constituting an infringement, attributable to the claimed, for the processing of data

personal, regulated in art. 6.1 a) of the RGPD, in relation to article 8.1 of the RGPD

when dealing with the image of minors, without the consent of the person who holds their country

authority, infringement considered very serious for purposes of prescription, in article 72.1.a)

of the LOPDGDD.

IV

By virtue of the provisions of article 58.2 RGPD, the Spanish Agency for

Data Protection, as a control authority, has a set of powers

corrective measures, among which is the power to impose fines, in the event that

there is an infringement of the provisions of the RGPD.

Article 58 section 2 GDPR provides the following:

“Each supervisory authority shall have all of the following corrective powers

listed below:

b) sanction any person responsible or in charge of the treatment with a warning

when the treatment operations have violated the provisions of this

Regulation;

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate, in accordance with

a certain way and within a specified period.

i) 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

particular.

In the present case, it is taken into account that by virtue of the principle of accuracy, the personal data must be up to date and all reasonable measures will be taken to have inaccurate personal data deleted or rectified without delay with respect to the purposes for which they are processed.

In this specific case, it has been accredited by virtue of the documents provided with his allegations to the initial agreement that the respondent has adopted a series of adequate measures that guarantee that no photographs of the minors by the claimed party when he does not have the consent of the parents, or those who hold parental authority over the minors who are the subject of said photographs, in accordance with what is regulated in art. 6.1 a) of the RGPD in relation to art. 8.1 of the GDPR.

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Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: WARN the person claimed, for one for the infraction of article 6.1 of the RGPD in relation to article 8 of the RGPD, in accordance with the provisions of article 58 section 2 of the RGPD.

SECOND: NOTIFY this resolution to the respondent and, in accordance with article 77.2 of the RGPD, INFORM the claimant about the result of the claim.

In accordance with the provisions of article 50 of the LOPDGDD, 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. 114.1 c) of the LPACAP, and in accordance with the provisions of article 123 of the LPACAP, Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of one month from the

day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

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 two months from the day following the notification of this act,

according to the provisions of article 46.1 of the aforementioned Law.

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

the firm decision may be provisionally suspended in administrative proceedings if the interested party

states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to

the Spanish Agency for Data Protection, presenting it through the Registry

Electronic Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through

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

october. You must also transfer to the Agency the documentation that accredits the

effective filing of the contentious-administrative appeal. If the Agency did not have

knowledge of the filing of the contentious-administrative appeal within two

months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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