

938-0419

Procedure No.: PS/00183/2019

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00183/2019, instructed by the Spanish Agency for Data Protection, to the entity ASOCIACIÓN CULTURAL JCAM, (hereinafter "the claimed entity"), for alleged infringement of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of Natural Persons with regard to the Processing of Personal Data and the Free Circulation of these Data (RGPD), and based on the following,

BACKGROUND

FIRST: On 08/13/18, you had a written entry to this Agency, submitted by A.A.A. (hereinafter, "the claimant"), in which he stated, among others, the following: "my daughter, a minor, was enrolled in a modeling academy. The person in charge of said academy/association has not made us sign any document in which reflects our express consent for you to take photos, much less to make use of them. There have been several unsuccessful attempts to get the return of graphic material. Enrollment form is attached in which no case refers to the protection of personal data ".

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 10/04/18 and 02/13/19, two information requests are addressed to the claimed entity.

THIRD: On 05/28/19, 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 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 6.1) of the RGPD and considered very serious in 72.1.b) of the LOPDGDD for prescription purposes, setting an initial sanction of warning, without prejudice to what would result in course of the investigation of the procedure, arguing that: "in the registration, of the claimed entity there is no reference to the regulations on Personal data protection. In addition, according to the complaint, the entity did not provide any type of document so that the parents or guardians of minors registered, give their consent to the treatment of the photographs taken of the sons".

FOURTH: According to the Certificate issued by the Correos entity, said requirement was sent to the claimed entity, being returned to destination, 06/12/19, with the annotation of "absent from the distribution". On 07/11/19, the publication is produced, in the Single Edictal Board of the BOE, of the notification of the agreement to start the

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23

sanctioning procedure PS/00183/2019, given the impossibility of notification in the home.

FIFTH: The entity claimed has not submitted to this Agency any written or

allegation, within the period granted for this purpose.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD, 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 LOPDGD), 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 RGD, 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 verified that, in the registration form, that the JCAM Cultural Association uses to register students in their courses there is no reference to the regulations on data protection of personal character. Nor does it provide any type of document so that parents or guardians of the minors enrolled, give their consent to the treatment of the photographs taken of the children.

All of the foregoing could imply an infraction due to violation of article 6.1) of the RGD, considered in article 72.1.b), of the LOPDGD 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:

FIRST: IMPOSE the JCAM CULTURAL ASSOCIATION, for violation of article 6.1 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning.

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3/3

SECOND: TO REQUEST the JCAM CULTURAL ASSOCIATION, so that, within the of one month from this act of notification, proceed to modify the models of enrollment in their courses in accordance with current regulations, in what refers to the protection of personal data.

THIRD: NOTIFY this resolution to the entity CULTURAL ASSOCIATION JCAM.

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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