

□ File No.: PS/00418/2021

RESOLUTION OF SANCTIONING PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on
to the following

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated 04/23/2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against the Municipal Group of VOX in the Madrid City Council

with NIF G86867108 (hereinafter, the claimed party). The reasons on which the

claim are as follows: the municipal group made a visit to the facilities

of IES Ramiro de Maeztu supporting the grassroots sport together with the Board of Directors of the Club of

Student Basketball; During said visit, a one-minute video was made that was

spread on social networks, twitter and instagram, in the aforementioned video minors appear without

that you have consented to the processing of your data.

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), within the scope of file E/06285/2021, transfer of

said claim to the claimed party, to proceed to its analysis and report

to this Agency within a month, of the actions carried out to adapt

to the requirements set forth in the data protection regulations.

On 06/21/2021, this Agency received a written response from the claimant

indicating that the Municipal Group of the Madrid City Council of VOX made a

visit to the facilities of IES Ramiro de Maeztu, supporting grassroots and

That visit was carried out in a one-minute video that was published on social networks; that

the graphic information is about a public event or event and the image of the

minors appear as merely accessory and proportionally, without

In no case is there damage to the honor or reputation of minors, nor the publication is contrary to their interests.

THIRD: On 08/04/2021 the Director of the Spanish Protection Agency de Datos agreed to admit the claim presented by the claimant for processing.

FOURTH: On 02/03/2022, the Director of the Spanish Protection Agency of Data agreed to start a sanctioning procedure for the person claimed by the alleged violation of article 6.1 of the GDPR, typified in article 83.5.a) of the GDPR, considering that the sanction that could correspond to him would be a warning.

FIFTH: Once the initiation agreement was notified, the defendant submitted a written statement of allegations on 02/09/2022 in which he states, in summary, the following: that the defendant made an institutional visit to the facilities of the basketball club at the invitation of the

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same; that a one-minute video of that visit was made and published on social networks;

that the graphic information is about a public event, caused by the club itself with their invitation to the municipal group, and the image of the minors that appears is merely accessory, players are not distinguished that are recorded at a high distance and that they are wearing the mask, being proportional and accessory recording;

In this case, a municipal group attends a meeting to promote the sport, and that publicizes the meeting itself, is part of its powers and of the

In the same way, it is a place open to the public, it has a political, cultural interest

and relevant sports without in any case there is impairment of the honor or reputation of minors; that the consent of minors is not required in cases in which your image is captured in relation to an event or event public and its image appears as merely accessory; remember the file of the procedure.

SIXTH: On 10/13/2021 the test practice period began, remembering the following:

Deem reproduced for evidentiary purposes the claim filed by the claimant and its documentation, the documents obtained and generated that They are part of procedure E/06285/2021.

Deem reproduced for evidentiary purposes, the allegations to the initiation agreement of the referenced disciplinary procedure, presented by the defendant.

SEVENTH: On 08/01/2022, a Resolution Proposal was issued in the sense that by the Director of the AEPD, the defendant will be penalized for a violation of article 6.1.a) of the GDPR, typified in article 83.5 of the GDPR, with a penalty of warning.

In a letter dated 08/08/2022, the defendant responded by reiterating the allegations presented in previous writings, emphasizing that article 25 of Law 7/1985, of April 2, Regulating the Bases of the Local Regime, establishes as competence of the municipalities, the promotion of sport and that Law 7/1985, of April 2, Regulating the Bases of Local Regime, in its wording given by the Law 27/2013, of December 27, on the rationalization and sustainability of the Local Administration (LRSAL), in relation to municipal sports, establishes as competence of the municipality, in its article 25, section I) "Promotion of the sports and sports facilities and occupation of free time" and that article 6

of the GDPR, expressly establishes that the treatment will be lawful, regardless of the consent, when e) the treatment is necessary 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.

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EIGHTH: Of the actions carried out in this procedure, there have been accredited the following,

PROVEN FACTS

FIRST. On 04/23/2021 the claimant filed a claim with the AEPD stating that the defendant made a visit to the facilities of the IES Ramiro de Maeztu supporting grassroots sport together with the Board of the Basketball Club Students; During said visit, a video was made that was disseminated on social networks, twitter and instagram, in which minors appear without their consent in the treatment of your data.

SECOND. It is recorded that on 03/04/2021 he appeared on the social networks Instagram and Twitter video of 1:07 minutes in which images of minors appear during your training.

THIRD. The claimant sent an e-mail dated 03/05/2021 to the Club Students expressing their disagreement with the visit to the facilities of the claimed and his surprise at the video of which he learned via Wasap in which You see moments of the training of one of your children, not finding it tolerable use of such images for political purposes.

FOURTH. On 03/05/2021, the Student Basketball Club responded by sending writing in which it indicated the following: "...in its capacity as a training club of reference has received in recent months several institutional visits from the different municipal political groups of the Madrid City Council, with the aim of discuss with the aforementioned political forces the sports projects that we are currently implementing and that we want to develop in the future.

In this context, on March 3, 2021, we received at the Movistar Academy

Magariños the visit of the components of the municipal group of VOX, taking media and VOX communication managers, images of the meeting held and of the sports facilities where we carry out our activities. When meeting in the pavilion at that time various teams from our youth academy carrying out training sessions, they took pictures, among other elements of the pavilion, of some of the the players who were exercising at that time.

The Club is going to transfer the Department of Communication of the municipal group of VOX in Madrid City Hall, the request to re-edit the video with the so that images of the players who were filmed are not broadcast".

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FIFTH. In a letter dated 03/05/2021, the Student Club addressed the defendant noting the following:

"Dear ...,

From the Student Basketball Club we are receiving some complaints from parents

of underage players for having been recorded while training during the visit made by the municipal group of VOX in the Ayto de Madrid last day 3 March, as the parents did not authorize the use and reproduction of those images.

For this reason and since the parents did not authorize the aforementioned recording, we

We request that you edit the video of the visit, eliminating the images of minors of age that appear”.

In this same line, it was sent in writing on 03/11/2021, again requesting the withdrawal of images of minors in the face of complaints from guardians and parents and, that in the case of not responding to the repeated requests, they would be forced to act together in appropriate actions.

SIXTH. In a letter of 06/21/2021, Vox has indicated in relation to the video that: “The graphic information is about a public event or event and the image of the minors appear as merely accessory and proportionally, in the same way way it is a place open to the public, and has a political, cultural and relevant sports.

In no case is there damage to the honor or reputation of minors, nor the publication contrary to their interests.

No one has addressed this party exercising any right”

SEVENTH. On 07/21/2021 the Student Club responded to the requirement of the AEPD stating that:

"(...)

Consequently, CLUB ESTUDIANTES has not intervened in the facts that are the object of the claim, since at no time was the recording of images of the students of the Club, but only the members of the group were allowed to enter VOX parliamentarian as part of an institutional visit to a venue owned by the City of Madrid. Therefore, the personal data of the claimant (his image)

have not been processed by CLUB ESTUDIANTES without their consent or
there has been a transfer of said personal data in favor of the aforementioned political party to
their own purposes.

(...)”.

FUNDAMENTALS OF LAW

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By virtue of the powers that article 58.2 of the GDPR recognizes to each
control authority, and as established in articles 47 and 48 of the LOPDGDD,
the Director of the Spanish Data Protection Agency is competent to initiate
and to solve this procedure.

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 the publication of a video
made in the facilities of the IES Ramiro de Maeztu containing images of
minors, which could imply the violation of the regulations regarding

Personal data protection.

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. The treatment 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;

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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 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."

II

1. Data processing requires the existence of a legal basis that legitimate, such as the consent of the interested party for the processing of the data personal data for one or more specific purposes.

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

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carried out in the public interest or in the exercise of public powers vested in the responsible for the treatment.

In the present case, the defendant is charged with the violation of article 6.1.a)

of the GDPR when the illegality of the treatment carried out by the person claimed to the

include in the recording images of minors and broadcast on social networks Twitter and Instagram the video made in the facilities of the IES Ramiro de Maeztu, without for the record that their representatives have given their consent.

As the facts show, the claimant, father of one of the minors, showed his surprise at the recorded video of which he learned via Wasap in the that you see reproduce moments of the training of one of your children.

The very club in which the events took place addressed the claimed, indicating that "For this reason and since the parents did not authorize the aforementioned recording, we ask you to edit the video of the visit, eliminating the images of the minors that appear" and that "at no time allowed the recording of images of the students of the Club, but only allowed entry to members of the VOX parliamentary group as part of a Institutional visit to a venue owned by the Madrid City Council".

Therefore, it is considered that the treatment carried out violates the principle of legality enshrined in article 6, not being acceptable as indicated by the defendant that "Graphic information is about a public event or occurrence and the image of minors appear as merely accessory and proportionally".

2. The defendant has alleged that the publication and dissemination on social networks of the video has sufficient legitimacy in section e) of article 6.1 GDPR that provides" e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers vested in the person responsible for the treatment".

This section justifies and legitimizes the processing based on activities carried out by public sector entities, among which are the included in the Local Administration, when said entities exercise powers public or a mission of public interest, which does not necessarily have to be

based on a specific legal obligation, but rather on the performance of one's own purposes of public interest that are exercised, in this case, by the municipalities.

Regarding the processing of personal data carried out under the protection of the letter e) of article 6.1 of the GDPR, the following clarifications must be made:

In the first place, that as provided in sections 2 and 3 of article 6 of the GDPR, the legal regulations that enable such treatment may establish specific provisions in relation to them:

"2. Member States may maintain or introduce more in order to adapt the application of the rules of this Regulation with regarding the treatment in compliance with section 1, letters c) and e), establishing more precisely specific treatment requirements and other measures that

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ensure lawful and equitable treatment, including in other situations specific treatment according to chapter IX.

3. The basis of the treatment indicated in section 1, letters c) and e), must be established by:

- a) Union law, or
- b) the law of the Member States that applies to the person responsible for the treatment.

The purpose of the treatment must be determined in said legal basis or, in relation to the treatment referred to in section 1, letter e), it will be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of

Public powers conferred on the data controller. This legal basis may contain specific provisions to adapt the application of rules of this Regulation, among others: the general conditions that govern the legality of the treatment by the person in charge; the types of data subject to processing; the interested affected; the entities to which personal data may be communicated and the purposes of such communication; purpose limitation; the storage periods of the data, as well as the operations and processing procedures, including the measures to ensure lawful and equitable treatment, such as those relating to other specific treatment situations under chapter IX. Union Law or of the Member States will fulfill an objective of public interest and will be proportional to the legitimate aim pursued”.

The defendant states that the promotion of sport by the groups municipal councils of the Madrid City Council is a mission that is clearly in the public interest, caused by the sports institution itself with its invitation and that article 25 of the Law 7/1985, of April 2, regulating the Bases of the Local Regime (LRBRL), expressly establishes, as a responsibility of the municipalities, the promotion of sport.

However, such a manifestation cannot be shared; it is true that in the LRBRL points out that one of the municipal powers is the promotion of sport in section I) of article 25:

"I) Promotion of sports and sports facilities and occupation of time free".

In the same way, Law 15/1994, of December 28, on Sport of the Community of Madrid, in its Chapter II, which is titled local entities, in article 23, Functions and powers, establishes that:

"1. In accordance with this Law and with what is established in the legislation

of the State on Local Regime, the Town Halls will exercise in their respective terms the following powers and functions:

a) Generally promote physical activity and sport in their area territory, promoting physical activities of a formative and recreational nature, especially among schoolchildren.

(...)”

It should be noted that data processing will be covered by letter e) of the Article 6.1 if the applicable law has attributed competence to the Administration

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by a norm with the force of law, article 8.2 of the LOPDGDD, and it will not be in case contrary.

Article 6.1.e) of the GDPR only considers data processing lawful based on said precept if it is necessary for the performance of a mission carried out in the public interest or in the exercise of powers public rights conferred on the data controller. Therefore, if a certain treatment is not "necessary" for the fulfillment of the mission carried out in the interest public or in the exercise of public powers conferred by law, said treatment would lack a sufficient legitimizing legal basis provided for in section and).

In the present case, if we consider that the public interest invoked by the claimed is determined by the generic mandate established in the previous norms addressed to local entities for the physical and sports promotion, of the

sports facilities, as well as the occupation of free time, etc., the treatment carried out by recording images of minors and disseminating them in the social networks Twitter and Instagram through the video made in the facilities of the IES Ramiro de Maeztu is not necessary for the fulfillment of this mission of interest public, considering that it violates article 6.1 of the GDPR and, in addition, in the norm invoked does not impose the obligation of said treatment, that mission is not determined of public interest and no public power is conferred to carry out the treatment.

3. In relation to the consent of minors, establishes article 7, the LOPDGDD that:

minors,
consent of
of

"1. The processing of personal data of a minor only

may be based on your consent when you are over fourteen years of age.

The cases in which the law requires the attendance of the holders of parental authority or guardianship for the celebration of the legal act or business in which context the consent for the treatment is obtained.

2. The treatment of the data of minors under fourteen years of age, based on the consent, it will only be lawful if that of the holder of parental authority or guardianship is recorded, with the scope determined by the holders of parental authority or guardianship".

And article 92, Protection of data of minors on the Internet, of the LOPDGDD provides that:

"Educational centers and any physical or legal persons who develop activities in which minors participate will guarantee the protection of the best interests of the minor and their fundamental rights, especially the right to the protection of personal data, in the publication or

dissemination of your personal data through services of the society of the information.

When said publication or diffusion were to take place through services of social networks or equivalent services must have the consent of the

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minor or their legal representatives, in accordance with the provisions of article 7 of this organic Law".

From the aforementioned regulations it can be deduced that in order to publish or disseminate the image of minors, parental or guardian consent is required if you are under the age of 14 years and, in any case, if the consent of the minor is over 14.

The GDPR considers the image as personal and subject data, for So much for protection. In order to process any personal data, a express consent of the owner, therefore, to process (publish) the recordings or videos that contain the image of a person, we need your consent or that of their representative or guardian.

4. It should be noted that the image is considered personal data of according to the definition of personal data provided by article 4 of the GDPR and, as such, any treatment that is carried out on the images of people identified or identifiable must comply with the requirements, obligations and principles established in the regulations on protection of personal data, GDPR and LOPDGDD.

Thus, in this specific case, the person who is recorded has the right

to consent to the collection and use of their image and, in addition, corresponds to the responsible for the treatment to ensure that the person from whom the request is made consent actually gives it.

In this sense, the image is personal data and the person responsible that records said image, you need to obtain the consent of the person and must comply with the personal data protection regulations.

For these purposes, the capture and recording of the image and/or voice on a support physical data are considered personal data processing when allow to determine, directly or indirectly, the identity of its owner, and in this case, Said treatment will only be legitimate if it is based on any of the grounds legal enumerated in art. 6.1 of the GDPR.

The Constitutional Court, in relation to the data protected by the right fundamental to the protection of personal data has indicated that "Of all that has been said It turns out that the content of the fundamental right to data protection consists of a power of disposal and control over personal data that empowers the person to decide which of these data to provide to a third party, be it the State or an individual, or which can be collected by this third party, and that also allows the individual know who owns that personal data and for what, being able to oppose that possession or use. These powers of disposal and control over personal data, that constitute part of the content of the fundamental right to data protection are legally specified in the power to consent to the collection, obtaining and use of access to personal data, its subsequent storage and treatment, as well as

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its use or possible uses, by a third party, be it the State or an individual. and that right to consent to the knowledge and treatment, computerized or not, of personal data, requires as essential complements, on the one hand, the ability to know everything moment who has these personal data and to what use is submitting them, and, on the other hand, the power to oppose that possession and uses.

In short, they are characteristic elements of the constitutional definition of law fundamental to the protection of personal data the rights of the affected to consent about the collection and use of your personal data and to know about them. and they turn out essential to make this content effective the recognition of the right to be informed of who owns your personal data and for what purpose, and the right to be able oppose that possession and use by requiring whoever it corresponds to put an end to the possession and use of data. That is, demanding from the owner of the file that inform of what data you have about your person, accessing your appropriate records and seats, and what destination they have had, which also reaches possible assignees; and, where appropriate, require him to rectify or cancel them."

The object of the fundamental right to data protection is not reduced only to the intimate data of the person, but to any type of personal data, whether or not intimate, whose knowledge or use by third parties may affect their rights, whether or not non-fundamental, because its object is not only individual privacy, which would already be protected by article 18.1 of the Constitution, but personal data.

In other words, the TC comes to extend this fundamental right to personal data public, which by the fact of being public cannot escape the power of disposition of the interested party or affected party, not limiting itself to those related to private life or personal data of the person, but the data covered and protected are all those that identify or allow the identification of the person, that can configure their

ideological, racial, sexual, economic profile, etc.

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".

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:

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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.

(...)

However, the LOPDGDD in its article 77,

Regime applicable to certain categories of controllers or processors, establishes what following:

"1. The regime established in this article will be applied to the treatments

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for which they are responsible or in charge:

- a) The constitutional bodies or those with constitutional relevance and the institutions of the autonomous communities analogous to them.
- b) The courts.
- c) The General State Administration, the Administrations of the autonomous communities and the entities that make up the Local Administration.
- d) Public bodies and public law entities linked or dependent on the Public Administrations.
- e) The independent administrative authorities.
- f) The Bank of Spain.
- g) Public law corporations when the purposes of the treatment related to the exercise of public law powers.
- h) Public sector foundations.
- i) Public Universities.
- j) Consortiums.
- k) The parliamentary groups of the Cortes Generales and the Assemblies

Autonomous legislatures, as well as the political groups of the Corporations

Local.

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2. When the managers or managers listed in section 1

commit any of the offenses referred to in articles 72 to 74 of

this organic law, the competent data protection authority will issue

resolution sanctioning them with a warning. The resolution will establish

likewise, the measures that should be adopted to cease the conduct or to correct it.

the effects of the offense committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the

body to which it depends hierarchically, if applicable, and to those affected who have

the condition of interested party, if applicable.

3. Without prejudice to what is established in the previous section, the authority of

data protection will also propose the initiation of disciplinary actions

when there is sufficient evidence to do so. In this case, the procedure and the

The sanctions to be applied will be those established in the legislation on the disciplinary regime.

or sanction that results from application.

Likewise, when the infractions are attributable to authorities and executives,

and the existence of technical reports or recommendations for treatment is accredited

that had not been duly attended to, in the resolution in which the

sanction will include a reprimand with the name of the responsible position and

will order the publication in the Official State or regional Gazette that

corresponds.

4. The data protection authority must be informed of the resolutions that fall in relation to the measures and actions to which they refer the previous two sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions analogous of the autonomous communities the actions carried out and the resolutions issued under this article.

6. When the competent authority is the Spanish Agency for the Protection of Data, it will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the person in charge or in charge of the treatment that had committed the infringement.

When the competence corresponds to an autonomous protection authority of data will be, in terms of the publicity of these resolutions, to what is available its specific regulations.

According to the available evidence, the conduct of the claimed constitutes an infringement of the provisions of article 6.1.a) of the GDPR, lack the consent of the parents or guardians of the minors that appear in the video broadcast through the social networks twitter and Instagram.

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The LOPDGDD contemplates in its article 77 the penalty of warning in relation to the processing of personal data that do not suit their

forecasts. In this regard, article 83.7 of the GDPR provides that "Without prejudice of the corrective powers of the supervisory authorities under Article 58, paragraph 2, each Member State may lay down rules on whether it can, and in what measure, impose administrative fines on public authorities and bodies established in that Member State.

Likewise, it is contemplated that the resolution issued may establish measures that should be adopted to cease the conduct, correct the effects of the infraction that had been committed and its adequacy to the requirements contemplated in article 6.1.a) of the RGPD, as well as the contribution of means accrediting the compliance with what is required.

It is necessary to point out that repeating the behavior revealed in the claim and that is the cause of this procedure, as well as not informing subsequently to this AEPD of the measures adopted to avoid incidents such as indicated could give rise to the exercise of possible actions before the person in charge of the treatment in order to effectively apply the measures that guarantee and do not compromise the legality of the processing of personal data and the privacy of people.

The corrective powers that the GDPR attributes to the AEPD as authority of control are listed in article 58.2, sections a) to j).

SAW

Article 83.5 of the GDPR establishes a sanction of an administrative fine (article 58.2.i) for the conducts that are typified therein, without prejudice to the fact that, as provided in the article 83.2. of the GDPR, administrative fines can be imposed together with other corrective measures provided for in article 58.2 of the GDPR.

Having confirmed the infringement, it is appropriate to impose on the person responsible the adoption of appropriate measures to adjust its performance to the aforementioned regulations

in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to which each control authority may “d) order the person in charge or in charge of the processing that the processing operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a certain specified period”.

In the present case, the defendant is required so that within a period of one month from the notification of this resolution:

- Accredited the adoption of measures so that they do not occur again incidents such as the one that gave rise to the disciplinary procedure: the recruitment and dissemination of images of minors in a video without the consent of their parents and that the treatments carried out comply with the provisions of the this Regulation and delete the image of all minors that appear in the video they have posted on social media.

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It is noted that not meeting the requirement can be considered as a administrative offense in accordance with the provisions of the GDPR, classified as infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE MADRID CITY COUNCIL VOX MUNICIPAL GROUP,

with NIF G86867108, for a violation of article 6.1.a) of the GDPR, typified in the article 83.5. a) of the GDPR, a warning sanction.

SECOND: NOTIFY this resolution to the VOX MUNICIPAL GROUP CITY OF MADRID.

THIRD: REQUEST the VOX MUNICIPAL GROUP MADRID CITY COUNCIL, so that within a month from the notification of this resolution, prove: the adoption of measures so that incidents like the one that gave rise to the sanctioning procedure: the capture and dissemination of images of minors in a video without the consent of their parents and that the treatments carried out conform to the requirements set forth in article 6.1 of the GDPR and to delete the image of all minors who appear in the video who have posted on social media.

FOURTH: COMMUNICATE this resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once the interested parties have been notified.

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

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the

LPACAP, interested parties may optionally file an appeal for reversal

before the Director of the Spanish Data Protection Agency within a period of one

month 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 for in article 46.1 of the

referred Law.

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

LPACAP, the firm resolution may be temporarily suspended in administrative proceedings

If the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

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through the

Electronic record of

presenting it to

the 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 October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within a period of two months from the

day following the notification of this resolution, would terminate the

injunction suspension

Mar Spain Marti

Director of the Spanish Data Protection Agency

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