

□ File No.: PS/00119/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 11/9/2020

before the Spanish Agency for Data Protection. The claim is directed against EDUCANDO

JUNTOS SL with NIF B85634681 (hereinafter, the claimed party. The reasons on which the claim are:

“The company EDUCANDO JUNTOS creates a new web page escuelaeducando.com using photographs of employees without requesting the authorization of each one. In my case, I have urged them in several times to remove the images in which I appear, but they ignore me. Also it is extended to publications on social networks such as FACEBOOK and INSTAGRAM”.

Provide a copy of:

- Emails exchanged with the web address of the claimed person, on file: notices 1, of 10/24/2020, requesting the removal of his photos from his website, Instagram and social networks.
- Copies of emails sent to the same address above, in notice file 2. In date 11/3/2020. It emphasizes that you request the deletion of your photos, images and videos, in the es-nursery school where he worked.
- File with “web” photographs featuring three photos, one of a group and two of two and three people. nas in the foreground respectively. Below these are three others. All under the heading “Educational team”, with the addition “they have not asked any of the employees for permission”.
- File that contains a handwritten, dates and numbers of photos in which they claim it-informs you that their photos to be deleted appear on INSTAGRAM (five dates), FACEBOOK (twenty-four dates), with the same literal of the absence of permission to upload any of the

Photos. The dates range from 2017 to 2020.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, the claim is transferred to the claimant electronically, appearing made available from 12/21/2020, and automatic rejection after ten calendar days from its availability for access (art. 43.2 of Law 39/2015, of the Common Administrative Procedure of Public Administrations (LPACAP).

The shipment is reiterated by postal mail, appearing absent in delivery in the two attempts, left notice, and returned as not withdrawn on 02/08/2021.

THIRD: On 03/15/2020, the admission to processing of the claim is agreed.

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FOURTH: Corporate purpose of the respondent, according to a BORME publication, is: "exploitation of schools, academies, nurseries, kindergartens, toy libraries, as well as all the activities related to education of all kinds of subjects", "date of incorporation: 02/26/2009".

FIFTH: On 05/14/2021, the Director of the AEPD agreed:

-INITIATE PUNISHMENT PROCEDURE against EDUCANDO JUNTOS SL, with NIF B85634681, for alleged violations of articles:

-6.1 of the RGPD, in accordance with article 83.5.a) of the RGPD.

-17 of the RGPD, in accordance with article 83.5.b) of the RGPD.

-For the purposes specified in the art. 64.2 b) of Law 39/2015, of 1/10, of the Procedure

Common Administrative Law of the Public Administrations, the sanctions that could

correspond would be two administrative fines of six thousand euros for the infraction of the

article 6.1 and three thousand euros for that of article 17 of the RGD, without prejudice to what results from

The instruction."

Once the agreement was notified, the result was: "expired", with this literal:

"The Support service of the Electronic Notifications Service and Electronic Address

Enabled CERTIFIES: - That the Ministry of Economic Affairs and Digital Transformation (at

through the General Secretariat of Digital Administration) is currently the owner of the Service

of Electronic Notifications (SNE) and Authorized Electronic Address (DEH) in accordance with

Order PRE/878/2010 and Royal Decree 139/2020, of January 28. The provider of said

service since June 26, 2015 is the National Currency and Stamp Factory-Royal House

de la Moneda (FNMT-RCM), according to the current Management Commission of the Ministry of

Treasury and Public Administrations. -That the notification was sent through said service:

Reference: 124439560a1392b77f27 Acting Administration: Spanish Protection Agency

(AEPD) Holder: - B85634681 Subject: "Notification" with the following result: Date

of availability: 05/16/2021 17:25:02 Automatic rejection date: 05/27/2021

00:00:00 Automatic rejection generally occurs after ten days have elapsed

from its availability for access according to paragraph 2, article 43, of the

Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations

Public. And in a particular way, after the term established by the acting Administration

in accordance with the specific legal regulations that apply. What is certified to

timely effects in Madrid on May 27, 2021"

SIXTH: After the term granted for the formulation of allegations to the initial agreement

of the procedure, it has been verified that no allegation has been received by the part of the

reclaimed.

Article 64.2.f) of the LPACAP -which is outlined in the opening agreement of the

procedure- establishes that if allegations are not made within the period established on the

content of the initiation agreement, when it contains a precise statement about

of the imputed responsibility, may be considered a resolution proposal. In the present

In this case, the agreement to initiate the sanctioning file determined the facts in which the

specified the imputation, the infraction of the RGPD attributed to the claimed and the sanction that could

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prevail. Therefore, taking into consideration that the respondent has not made any allegations

to the agreement to initiate the file and in accordance with the provisions of the aforementioned article, the aforementioned

Initiation agreement is considered in this case resolution proposal.

In view of everything that has been done, by the Spanish Agency for Data Protection in the

In this proceeding, the following are considered proven facts:

#### FACTS

1) The claimant, who was an employee of the respondent, requests on 10/22/2020 by mail

email (provide a copy in your claim) that “the photos on the website, Instagram,

Facebook”, in which it appears, are eliminated. In a first response, the claimed

The next day, via email, he indicates that "we get down to it." follow a

exchange of emails that ends with that of the claimed, of 10/24/2020, in which it states

that “the photos have always been with your consent, since you have always consented to the

their use, moreover, they have always been posted by the teachers”

2) In the email of 3/11/2020, the claimant sends a message to the claimed,

noting that "they do not have the consent for their image to appear on the website,

social networks and similar means of diffusion external to the school”, “in which it came

performed” their work, and that they were not informed that the photos and videos would leave the scope

school private. Reiterates the request to remove the images and videos, submitting

claim before this AEPD on 9/11/2020.

3) The claimed:

It provides six photographs from the defendant's website, all under the heading "Educational Team".

a.

captive", with the addition "they have not asked any of the employees for permission". of the same more, two are from a group, and in the foreground: two from two and two from three people respectively. vely.

b.

Provides a handwritten list in which the claimant indicates the places and dates in those whose photos appear: INSTAGRAM (five dates), the first of 2017, the last of May 2020, FACEBOOK between 2017 and 2020 (twenty-four dates), with the same literal of the authorisation to upload any of the photos.

4)

The AEPD forwards the claim to the claimant, consigning the shipment as being provision from 12/21/2020, with automatic rejection after ten calendar days have elapsed from its availability for access (art. 43.2 of the LPACAP. The shipment is reiterated on by mail, appearing absent in delivery in both attempts, leaving notice, and returned for not withdrawn on 02/08/2021.

The initiation agreement was made available to the respondent on 05/16/2021, by

5)

electronic notification, through the provider of said service, certifying their non-access to the same, with what is understood as rejected (art 43.2 LPCAP).

It is not proven that the claimed party has fulfilled the right to delete data from the

6)

claimant, or has removed the claimant's photos.

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It is not proven that the respondent has a legitimizing basis for the treatment of the

7)

Claimant's photos.

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and

as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Agency

Spanish Data Protection is competent to resolve this procedure.

II

The RGPD defines data processing in article 4.2 of the RGPD:

“any operation or set of operations carried out on personal data or

sets of personal data, whether by automated procedures or not, such as the

collection, registration, organization, structuring, conservation, adaptation or modification,

extraction, consultation, use, communication by transmission, diffusion or any other form

authorization of access, collation or interconnection, limitation, deletion or destruction”

The treatment of images, in this case in photos, must have a legal basis,

of some listed in article 6.1 of the RGPD.

By having images of the claimant, personal data, considering that they do not

legitimizing basis for it concurs, the defendant is imputed the commission of an alleged

violation of article 6.1 of the RGPD that indicates:

1. The treatment will only be lawful if at least one of the following conditions is met:

a) the interested party gave his consent for the processing of his personal data for one

or several specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is part or for the application at the request of the latter of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the data controller;

d) the processing is necessary to protect the vital interests of the data subject or another person physical;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest public or in the exercise of public powers vested in the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the responsible for the treatment or by a third party, provided that said interests are not prevail the interests or the fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.

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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.

Once the positive fact of the treatment has been proven, it is necessary to prove compliance with the requirements to the claimant. In this sense, not accredited that the exhibition of the photographs object of the claim in various social networks on the website itself will have some of the bases legitimizing that article 6 of the RGPD indicates, the commission of the infraction is accredited imputed.

III

The right of deletion is the right of the interested party to demand from the data controller,

in this case to the claimed, which excludes personal data from treatment. The right-

The deletion is a reflection of the informative self-determination of control of the data of your ticket.

tular.

The right of deletion is contained in article 17 of the RGPD as a right of the interested party,

or concerned with your data, and at the same time supposes an obligation of the person in charge (of the treatment-

lie), indicating:

1. The interested party shall have the right to obtain, without undue delay, from the person responsible for the

deletion of the personal data that concerns you, which will be obliged to su-

suppress personal data without undue delay when any of the circumstances

following:

a) the personal data is no longer necessary in relation to the purposes for which

were collected or otherwise treated;

b) the interested party withdraws the consent on which the treatment is based in accordance

with Article 6(1)(a) or Article 9(2)(a) and is not based on

other legal basis;

c) the interested party opposes the treatment in accordance with article 21, paragraph 1, and does not

other legitimate reasons for the treatment prevail, or the interested party opposes the treatment.

to according to article 21, paragraph 2;

d) the personal data has been illicitly processed;

The fact of not attending to the right of deletion of photographs exposed by the claimed in

its website and social networks supposes the infringement of article 17 of the RGPD.

IV

Article 58.2 of the RGPD provides: "Each control authority will have all the

following corrective powers indicated below:

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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 a certain manner 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;

A fine is imposed for not responding to the claimant's right and not making effective the same, in addition the exposed images come from several years and date back to 2017.

v

Regarding these two infractions and the sanctions, article 83.5 of the RGPD refers:

“Infractions of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual global turnover of the previous financial year, opting for the highest amount:

- a) the basic principles for treatment, including the conditions for consent according to articles 5, 6, 7 and 9;
- b) the rights of the interested parties pursuant to articles 12 to 22.”

SAW

The infractions are typified in article 72 of the LOPDGDD:

1.

Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a

substantial violation of the articles mentioned therein 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 Regulation (EU) 2016/679.

k) The impediment or the hindrance or the repeated non-attention of the exercise of the rights established in articles 15 to 22 of Regulation (EU) 2016/679.

7th

The determination of the sanctions that should be imposed in this case requires observing the provisions of articles 83.1) and .2) of the RGPD, precepts that, respectively, provide the

Next:

"1. Each control authority will guarantee that the imposition of administrative fines in accordance with this article for the infringements of this Regulation indicated in the sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive."

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"two. Administrative fines will be imposed, depending on the circumstances of each case individually, as an additional or substitute for the measures contemplated in article 58, paragraphs

C 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount in each individual case will be duly taken into account:

the nature, seriousness and duration of the offence, taking into account the nature, al-

a)

scope or purpose of the processing operation in question, as well as the number of individuals affected and the level of damages they have suffered;

b)

the intentionality or negligence in the infringement;

any measure taken by the person responsible or in charge of the treatment to alleviate the

c)

damages suffered by the interested parties;

d)

the degree of responsibility of the person in charge or of the person in charge of the treatment, given

account of the technical or organizational measures they have applied under Articles 25

and 32;

and)

any prior infringement committed by the controller or processor;

the degree of cooperation with the supervisory authority in order to remedy the in-

F)

fraction and mitigate the possible adverse effects of the infringement;

g)

the categories of personal data affected by the breach;

the way in which the supervisory authority became aware of the infringement, in particular

i)

whether the controller or processor reported the breach and, if so, to what extent;

Yo)

when the measures indicated in article 58, section 2, have been ordered prior to

directly against the person in charge or the person in charge in question in relation to the same matter.

to, compliance with said measures;

adherence to codes of conduct under article 40 or certification mechanisms

g)

cation approved under article 42, and

any other aggravating or mitigating factor applicable to the circumstances of the case,

k)

as the financial benefits obtained or losses avoided, directly or indirectly, through  
through the infringement.”

Within this section, the LOPDGDD contemplates in its article 76, entitled "Sanctions and me-  
corrective measures”:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU)  
2016/679 will be applied taking into account the graduation criteria established in the  
section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679, also  
may be taken into account:

a) The continuing nature of the offence.

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b) The link between the activity of the offender and the performance of data processing  
personal.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have induced the commission of the crime.  
infringement.

e) The existence of a merger by absorption process subsequent to the commission of the  
infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection delegate.

h) Submission by the person in charge or person in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which there are

controversies between them and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate, of the

remaining corrective measures referred to in article 83.2 of the Regulation (EU)

2016/679.”

In accordance with the precepts transcribed, in order to set the amount of the sanction of a fine to

impose, in the present case, for the infringement of article 6.1 of the RGPD, of which

holds the defendant responsible, the following are considered concurrent as aggravating circumstances

factors that reveal greater unlawfulness and/or culpability in the conduct of the defendant:

-Article 83.2.a) RGPD: “Nature, seriousness and duration of the infringement taking into account

the nature, scope or purpose of the treatment operation in question as well as the

number of interested parties affected and the level of damages they have suffered. It tra-

ta of treatments that come from afar, year 2017, last in 2018, until 2020, their quantity

that are not scarce, and the scope that it has, as it highlights, that they appear in two networks

and the website itself, valuing the amount at six thousand euros (6,000 euros).

In the infringement due to lack of attention to the right to delete data, article 17 of the

RGPD, for the purposes of setting the amount of the fine sanction to be imposed, of which

holds the defendant responsible, the following are considered concurrent as aggravating circumstances

factors that reveal greater unlawfulness and/or culpability in the conduct of the defendant:

-Article 83.2b) “the intention or negligence in the infraction”, not being an action

intentionally, it was requested up to two times, without obtaining any response, which denotes

a special lack of diligence in the fulfillment of the duties that correspond to him,

valuing the infringement, at three thousand euros (3,000 euros).

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Therefore, in accordance with the applicable legislation and proving the infractions,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE EDUCANDO JUNTOS SL, with NIF B85634681, for an infraction

of article 6.1 of the RGD, typified in article 83.5 a) of the RGD, and for the purposes of prescription in article 72.1.a) of the LOPDGDD, a fine of 6,000 euros (six thousand euros).

SECOND: IMPOSE EDUCANDO JUNTOS SL, with NIF B85634681, for an infraction

of article 17 of the RGD, typified in Article 83.5 b) of the RGD, and for the purposes of prescription in article 72.1.k) of the LOPDGDD, a fine of 3,000 euros (three thousand euros).

THIRD: NOTIFY this resolution to EDUCANDO JUNTOS SL.

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

This resolution is executive, in accordance with the provisions of art. 98.1.b) of the

LPACAP, within the voluntary payment period established in art. 68 of the General Regulations of

Collection, approved by Royal Decree 939/2005, of 07/29, in relation to art. 62 of the

Law 58/2003, of 12/17, through its entry, indicating the NIF of the penalized person and the number of procedure that appears in the heading of this document, in the restricted account

nº ES00 0000 0000 0000 0000 0000, opened in the name of the Spanish Protection Agency

of Data in the banking entity CAIXABANK, S.A.. Otherwise, it will be processed

collection in executive period.

Received the notification and once executed, if the date of execution is between the

days 1 and 15 of each month, both inclusive, the term to make the voluntary payment will be until

on the 20th day of the following month or immediately after, and if it is between the 16th and

last of each month, both inclusive, the payment term will be until the 5th of the second month

next or immediately following business.

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

It 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 LOPDGDD, 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 Agency Spanish Data Protection Authority within a month from the day following the notification of this resolution or directly contentious-administrative appeal before the Chamber of the Contentious-administrative of the National High Court, in accordance with the provisions of the article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13 July, regulatory of the Contentious-administrative Jurisdiction, in the term of two months to count from the day following the notification of this act, as provided in 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, it may be precautionary suspension of the firm decision in administrative proceedings if the interested party expresses its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

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

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

You must also 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 two months from the day

following the notification of this resolution, it would end the suspension

precautionary

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