

□ File No.: EXP202100303

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: TWO CLAIMANTS (hereinafter, CLAIMANT 1, and CLAIMANT 2,
as they appear in ANNEX 1), with dates 08/17, 09/22/2020, and 06/1 and 08/1/2021, the
first, and 07/07/2021 the second, filed a claim with the Spanish Agency
of Data Protection. The claims are directed against the FEDERATION
ANDALUZA DE ESGRIMA with NIF V41271370 (hereinafter, the claimed party).

Claimant 1, states that the defendant publishes her claim on her website that
resolves the Administrative Court of Sports of Andalusia (TADA) in matters of
electoral process. Indicates the link and the name of the document: TADA

***DOCUMENT.1.

Provide a copy of a new published resolution: TADA***DOCUMENTO.2-

inadmissibility-, departure *** DATE.1, addressee, the claimed ("for the appropriate purposes,
knowledge of the Federation, legal notification, compliance and execution of the
agreed", sending the agreement adopted on the filing of the claimant of
written against the "resolution of the Presidency of the Federation by which
elections to members of the General Assembly and resolution is of
inadmissibility of the appeal.

On the other hand, it indicates that, after consulting the AEPD website, as of 08/01/2021, they do not have
Data Protection Officer.

Claimant 2 states that the claimant on his website publishes "various resolutions
of the aforementioned TADA", without specifying, and has published the sentence in its entirety

***JUDGMENT.1 of the Supreme Court of Andalusia of ***DATE.2 in which she was a party.

Also, that a DPD has not been designated "verified through the search engine of that Agency."

The sentence that appears on the website appears in the section "notifications-resolutions" with the text: "The different notifications and resolutions are considered to be of public interest issued by each of the organic structures of the Ministry of Tourism and Sport of the Junta de Andalucía", appearing the pdf of the sentence. It's about a appeal of the defendant against a resolution of the General Secretariat for the Sport of the Ministry of Tourism and Sports of the Junta de Andalucía, by which agrees to uphold the appeal filed by the claimant, declaring Estimated by positive silence the license object of appeal.

SECOND: The AEPD verified on 07/1 and 07/8/2021 that by consulting the NIF of the one claimed in the electronic headquarters of the AEPD, in the search section of

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"Delegates of Data Protection", did not yield any results, leaving screen print on file.

THIRD: In accordance with article 65.4 of Organic Law 3/2018, of 5/12,

Protection of Personal Data and guarantee of digital rights (hereinafter

LOPDGDD), claim 1 was transferred to the claimed party on 09/28/2020,

reiterating on 10/9/2020, by post to the address of Playa de las Almadrabillas 10 de

Almería, appearing delivered on 10/16/2022 without the request being attended to.

In the same sense, the claim of claimant 2 was transferred through

notifications of 07/14/2021, 07/26, 08/5 and 11, and 09/8 and 22/2021, without attending none. The shipment of 07/26/2021 by post to Playa de las Almadrabillas 10, gave as a result "returned to origin by unknown on 08/09/2021"

FOURTH: On 12/22/2021, the link provided by claimant 1 is accessed

***URL.1, including a resolution of four pages of the TADA, the ***DOCUMENTO.3 in pdf, being able to download freely, with the date of registration output ***DATE.3, recipient: Andalusian Fencing Federation, is a resolution issued on ***DATE.4 containing the data of claimant 1.

On 01/14/2022, the website of the claimed parties is accessed and, from the section of "notifications resolutions" the sentence *** SENTENCIA.1 is shown in pdf, of 09/10/2019, being able to download freely that is made up of 13 pages PDF containing the entire sentence with the claimant's data 2.

FIFTH: On 02/9/2022, the Director of the AEPD agreed:

"START SANCTION PROCEDURE for the ANDALUSIAN FEDERATION OF FENCING, with NIF V41271370, for the alleged infringement:

- Article 6.1 of the GDPR, in accordance with article 83.5. a) GDPR, classified for the purposes of prescription in article 72.1.b) of the LOPDGDD", for which initially an administrative fine of 5,000 euros was estimated.

"-of article 37 of the RGPD in relation to 34 of the LOPDGDD, in accordance with article 83.4. a) of the GDPR, typified for prescription purposes in article 73.v) of the LOPDGDD", for which initially an administrative fine of 1,000 euros".

SIXTH: The telematic notification of the initiation agreement is made available to the one claimed on 02/10/2022, and automatic rejection date on 02/21/2022, meaning practiced the same, as determined by the LPCAP in its article 43.2. made the attempt by postal notification, including access to the DEHU on 02/14/2022.

No claims were received.

SEVENTH: On 05/25/2022, a test practice period begins,

requesting the defendant:

1) Provide proof that the documents and judgments that are the subject of this

claim have been removed from your website, and the date on which they were removed.

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2) Provide accreditation that DPD has been designated and appointed, and that

communicated to the data protection authority.

The electronic notification sent gave the result "expired", since the

ten calendar days on 06/5/2022 from its availability for access, with which

which is understood to be rejected in accordance with article 43.2 of the LPCAP.

The shipment is attempted again by post on 06/7/2022, to the address Playa de las

Almadrabillas 10, Almería, appearing "returned to origin by unknown the

06/15/2022".

EIGHTH: On 08/31/2022, the resolution proposal was issued by the instructor,

from the literal:

"That the Director of the Spanish Agency for Data Protection sanctions

ANDALUSIAN FEDERATION OF FENCING, with NIF V41271370, for

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

GDPR, and for the purposes of prescription, of article 72.1.b) of the LOPDGDD, with a

Administrative fine of 5,000 euros.

- Violation of article 37 of the GDPR in relation to article 34.1 o) and .3 of the

LOPDGDD, in accordance with article 83.4.a) of the GDPR, and for the purposes of prescription, of the article of the LOPDGDD, with an administrative fine of 1,000 euros.”

The telematic notification resulted in expired at the expiration of the period granted for your access, understood as done.

No claims were received.

EIGHTH: Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: Claimant 1, claims that the defendant publishes various documents of the Administrative Court of Sports of Andalusia (TADA) regarding of electoral process. Indicates the link and the name of the documents: TADA

DOCUMENTO.1, noting that in that url, it leads to the web page of the claimed, section "electoral process" and in "TADA resolutions", the existence of the TADA ***DOCUMENTO.3 in pdf, clicking on it you get the full document in pdf. It also adds, the TADADOCUMENTO.2 and TADA ***DOCUMENT.3. He adds that he does not have DPD either. It is verified that as of 12/22/2021 appears on the web, at least resolution TADA ***DOCUMENTO.3, containing its data that although crossed out are visible against the light and are also mentioned in the next page.

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SECOND: Claimant 2 claims that the defendant publishes on its website, section

resolutions “the Judgment ***JUDGMENT.1 CONTENTIOUS ROOM

ADMINISTRATIVE OF THE SUPERIOR COURT OF JUSTICE OF ANDALUSIA. IN

SEVILLE. THIRD SECTION, through DocExp document ***DOCUMENTO.4 17-

10-2019_1.PDF, freely accessible on the internet and full publication”, “which contains the

all the information of the documents, containing my name and surnames without my

consent”. Also, it doesn't have DPD. Provide a copy of the sentence, which

is dated ***DATE.2, contains the reference to claimant 2, and is verified in

consultation of 01/14/2022 and 02/1/2022 that is fully exposed on the website of the

claimed, section notifications, resolutions. It consists of the literal “it is considered of

public interest the various notifications and resolutions issued by each of the

organic structures of the Ministry of Tourism and Sports of the Junta de Andalucía”

THIRD: Figure in the DPD consultation file of 07/1 and 07/2021 at the headquarters

of the AEPD by the NIF of the claimed, without recording results.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of 5/12, Protection of Personal Data and guarantee of the

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: “Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures.”

Article 4 of the GDPR defines

1) "personal data": any information about an identified natural person or identifiable ("the data subject"); An identifiable natural person shall be considered any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number, data of location, an online identifier or one or more elements of identity physical, physiological, genetic, mental, economic, cultural or social of said person;

2) processing": any operation or set of operations performed on data 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,

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communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, deletion or destruction;

7) responsible for the treatment" or "responsible": the natural or legal person, public authority, service or other body which, alone or jointly with others, determines the purposes and means of processing; if the law of the Union or of the Member States determines the purposes and means of processing, the controller or the Specific criteria for their appointment may be established by Union law or of the Member States;"

The exposure of data contained in administrative resolutions and in a judgment

on the website of the defendant constitute personal data processing.

II

For data processing, (display on the judgment and resolution website administration containing the data of those affected and their associated information) the responsible for the treatment, in this case the defendant, must identify a basis legal treatment in order that the treatment carried out is legal. Article 6.1 of the GDPR, establishes the assumptions that allow the treatment of data to be considered lawful. following personal data:

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 personal data 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 an applicable legal obligation 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 vested in the person responsible for the treatment;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person in charge of the treatment or by a third party, provided that on said interests do not outweigh the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the

interested 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.”

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In the present case, it is not proven that the "public interest" alleged for the exhibitions on the website of the defendant, given that they are communications of administrative resolutions between bodies, in whose regime the public exposure of the same, nor are they as a means of subsidiary notification to those affected, nor is there a rule that enables such communication. Furthermore, if there is habilitation, the exposed documents should not remain more than a time specifically determined for the purpose for which they are exhibited, in application of the principle of limitation of the conservation period that indicates that personal data will be: “maintained in a way that allows the identification of the interested parties for no longer than necessary for the purposes of data processing personal”, and the defendant may still dispose of documents exposed in similar characteristics from several years ago.

It is not estimated that any of the assumptions that enable the aforementioned exhibitions that contain personal data, accrediting the commission of the violation of this article.

Article 83.5.a) of the GDPR indicates:

IV.

5. Violations of the following provisions will be penalized, in accordance with

paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

The LOPDGDD in its article 72.1.b) states:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that a substantial violation of the articles mentioned therein and, in particular, the following:

b) The processing of personal data without the fulfillment of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679."

V

The defendant is accused of a violation of article 37 of the GDPR in relation to the Article 34 of the LOPDGDD that state:

"1. The person in charge and the person in charge of the treatment will designate a delegate of protection of data provided that:

[...]"

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4. In cases other than those contemplated in section 1, the person in charge or the data controller or associations and other bodies representing

categories of managers or managers may designate a protection delegate of data or they must designate it if required by the Law of the Union or of the States members. The data protection officer may act on behalf of these associations and other bodies that represent managers or managers.”

The LOPDGDD specifies in its article 34.1 o) and .3: "Appointment of a delegate of Data Protection:

"1. Those responsible and in charge of the treatment must designate a delegate of data protection in the cases provided for in article 37.1 of the Regulation (EU) 2016/679 and, in any case, in the case of the following entities:

o) Sports federations when they process data of minors.

3. Those responsible and in charge of the treatment will communicate within ten days to the Spanish Data Protection Agency or, where appropriate, to the authorities data protection, the designations, appointments and cessations of the data protection delegates both in the cases in which they are bound to their designation as in the case in which it is voluntary.”

It is notorious and public on the website of the defendant, which issues sports licenses for minors, from 14 years old and offers other information on its website about competitions and ages from which the sport can be practiced. The defendant has not given any an explanation of the designation and appointment of the obligation imposed by the said provision, so that from the claims and throughout their processing it is considered that it has not complied with this obligation.

SAW

The infringement is considered as such in article 83.4.a) of the GDPR which states: "4.

Violations of the following provisions will be penalized, in accordance with the paragraph 2, with administrative fines of a maximum of 10,000,000 EUR or, in the case of of a company, of an amount equivalent to a maximum of 2% of the volume of

overall annual total business of the previous financial year, opting for the one with the highest amount:

a) the obligations of the controller and the person in charge under articles 8, 11, 25 to 39, 42 and 43;"

The LOPDGDD in its article 73.v), states:

"Based on what is established in article 83.4 of Regulation (EU) 2016/679, the

They are considered serious and will prescribe after two years the infractions that suppose a vulnerability.

substantial portion of the articles mentioned therein and, in particular, the following

"v) Failure to comply with the obligation to designate a data protection officer

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when their appointment is required in accordance with article 37 of the Regulations (UE) 2016/679 and article 34 of this organic law."

VII

Sections d) and i) of article 58.2 of the GDPR provide the following:

2 Each supervisory authority shall have all the following powers

corrections listed below:

(...)

"d) order the person in charge or person in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;"

"i) impose an administrative fine in accordance with article 83, in addition to or in instead of the measures referred to in this paragraph, depending on the circumstances

of each particular case;”

The eventual mandate to adapt the publication processing operations to the GDPR, would be to do it anonymously, so that it would not be possible to identify or make those affected identifiable, neither directly nor indirectly, and the designation and Appointment of Data Protection Officer.

The determination of the sanctions that should be imposed in the present case requires observe the provisions of articles 83.1) and .2) of the GDPR, precepts that, respectively provide the following:

"1. Each control authority will guarantee that the imposition of administrative fines proceedings under this Article for infringements of this Regulation indicated in sections 4, 5 and 6 are effective in each individual case, provided nothings and deterrents.”

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, as an additional or substitute title to the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose an admissible fine administration and its amount in each individual case shall be duly taken into account:

- a) the nature, seriousness and duration of the offence, taking into account the nature nature, scope or purpose of the processing operation in question, as well as the number number of interested parties affected and the level of damages they have suffered;
- b) intentionality or negligence in the infraction;
- c) any measure taken by the person in charge or in charge of the treatment to settle the 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, having gives an account of the technical or organizational measures that have been applied by virtue of the articles 25 and 32;

- e) any previous infringement committed by the controller or processor;
- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular determine whether the controller or processor notified the infringement and, if so, to what extent gives;
- i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge in relation to the same matter, compliance with said measures; adherence to codes of conduct under article 40 or to mechanisms of
- j) certification approved in accordance with article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, as the financial benefits obtained or the losses avoided, directly or indirectly. mind, through infraction.”

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

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

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of data processing.
personal information.
- c) The benefits obtained as a consequence of the commission of the infraction.
- d) The possibility that the conduct of the affected party could have led to the commission
of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the
violation, which cannot be attributed to the absorbing entity.
- f) The affectation of the rights of minors.
- g) Have, when it is not mandatory, a data protection delegate.
- h) Submission by the person responsible or in charge, on a voluntary basis, to
alternative conflict resolution mechanisms, in those cases in which

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there are controversies between those 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, for the purpose of setting the amount of the sanction of
fine to be imposed in the present case for the infraction of article 6.1 typified in the
Article 83.5.a) of the GDPR, for which the defendant is held responsible, it is estimated
concurrent as aggravating factors the following factors that reveal a greater

illegality and/or culpability in the conduct of the defendant:

-Article 83.2.a) GDPR "nature, seriousness and duration of the infringement, taking into account account the nature, scope or purpose of the processing operation concerned, as well as the number of interested parties affected and the level of damages that they have suffered; It is not necessary to disclose the identifying data of the claimants to give transparency to the actions of the defendant, without adding anything to the knowledge of these data that are framed as resolutions of interest that catalogs the claim, affecting two people, one of them more than one resolution, not being classified as an eventual isolated fact.

-Article 83.2.b) GDPR. "Intentional or negligent infringement": It is not observe specific precautions in the matter of data protection, in cases of repeated facts, with the consequent deduction of a clear lack of diligence in the Act.

-Article 76.2.b) of the LOPDGDD, "The link between the offender's activity and the processing of personal data.", not being strange the treatment for the activity of the defendant in matters such as licences, sports discipline, etc. in which the processing of personal data is operated.

As a balance of the circumstances, it is considered that the amount of the sanction is 5,000 euro.

Regarding the infraction due to the absence of DPD, it is considered that the amount of the sanction tion is 1,000 euros.

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 the ANDALUSIAN FENCING FEDERATION, with NIF

V41271370:

- an administrative fine for a violation of article 6.1 of the GDPR, of

in accordance with article 83.5.a) of the GDPR, and for prescription purposes, of article 72.1.b) of the LOPDGDD, for an amount of 5,000 euros.

- an administrative fine for an infringement of article 37 of the GDPR in relation to article 34.1 o) and .3 of the LOPDGDD, in accordance with article 83.4.a) of the

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GDPR, and for the purposes of prescription, of article 73.v) of the LOPDGDD, with a fine administration of 1,000 euros.

SECOND: NOTIFY this resolution to the ANDALUSIAN FEDERATION OF FENCING, attaching ANNEX 1

THIRD: Warn the penalized person that they must make the imposed sanction effective

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of 1/10, on the Common Administrative Procedure of

Public Administrations (hereinafter LPACAP), within the voluntary payment term

established in art. 68 of the General Collection Regulations, approved by Royal

Decree 939/2005, of 07/29, in relation to art. 62 of Law 58/2003, of 12/17,

through its entry, indicating the NIF of the sanctioned party and the number of the procedure

that appears in the heading of this document, in the restricted account number ES00

0000 0000 0000 0000 0000, open in the name of the Spanish Protection Agency

of Data in the banking entity CAIXABANK, S.A.. Otherwise, it will proceed to

its collection in the executive period.

Once the notification has been received and once executed, if the execution date is

between the 1st and 15th of each month, both inclusive, the term to make the payment voluntary will be until the 20th day of the following or immediately following business month, and if between the 16th and the last day of each month, both inclusive, the payment term It will be until the 5th of the second following or immediately following business month.

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

Interested parties may optionally file an appeal for reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from count 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 07/13, 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, may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact through writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registries provided for in art. 16.4 of the

mentioned LPCAP. You must also transfer to the Agency the documentation that accredits the effective filing of the contentious-administrative appeal. If the agency does not

was aware of the filing of the contentious-administrative appeal in the

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period of two months from the day following the notification of this resolution,

would terminate the injunction.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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APPENDIX 1

CLAIMANT 1, R.R.R.

CLAIMANT 2, S.S.S.

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