

□ Procedure No.: PS/00468/2021

RESOLUTION OF PUNISHMENT PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency before the CLUB DEPORTIVO RITMO DE ANDALUCIA, with CIF.: G23718299 (hereinafter, “the claimed party”), by virtue of a complaint filed by Ms. A.A.A., (hereinafter, “the claimant party”), and based on the following:

BACKGROUND:

FIRST: On 06/12/21, the document submitted was received by this Agency by the claimant, in which, in essence, the following was claimed: “The claimant is the mother of a minor registered in the claimed Sports Club and points out that said Club has not implemented adequate protection measures of data, for the management and custody of data of its members and relatives, and indicates that the registration document imposes a general consent for the transfer of images of the associates, along with other data processing, pointing out also that data of minors are exposed on social networks.

Together with the written claim, the images from the page of the entity in the social network ***RED.1, and the registration documents to the Club in the seasons 2019/2020 and 2020/2021, where a general consent is established for the assignment of the image of the associates, together with other consents:

(...) MOTHER, FATHER OR LEGAL GUARDIAN: I authorize as mother, father or legal guardian to the student... Your registration as a member in the C.D. Rhythm of Andalusia, abiding by the rules of this: • Participate in exhibitions and competitions of rhythmic gymnastics. •

Cession of image rights for web pages and social networks of C.D. Rhythm of Andalusia. • Transfer of personal data, both for inclusion in the file of the Andalusian Federation of Gymnastics, insurance company, as for

Websites and social networks of the Club.

SECOND: On 07/07/21 and 07/19/21, this Agency sent

two separate writings to the entity claimed requesting information regarding the

claim filed, in accordance with the provisions of article 65.4 of the Law

Organic 3/2018, of December 5, on the protection of personal data and guarantee of

digital rights, (LOPDGDD).

THIRD: On 08/27/21, the entity claims, sent a written response to the

request made by this Agency, in which, in essence, it alleged the following:

“No request to exercise the rights has been received in this club.

(established in the RGPD in its articles 15 to 22) of any kind by the

claimant. At no time have you transmitted to us your desire for access, rectification,

deletion etc. of the personal data that we process. If it had been received

formally or informally any request of this type, we would have proceeded to your

response without delay. From the moment you tell us your concerns have been

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launched actions aimed at reinforcing regulatory compliance

established in the GDPR.

We have contracted a specialized consultant to supervise the level of

regulatory compliance in terms of data protection, as a result of this work, it was

have detected incidents that are going to be corrected without delay, specifically,

modify the registration form in which a first layer will be included

information regarding the data processing to be carried out, as well as a link to

the privacy policy. The authorizations for different treatments (images on social networks, belonging to groups of WhatsApp, etc.) as established in the RGPD. Ultimately, there will be a complete review of the data processing carried out so that they comply with the provisions of the LOPDGDD so that there is a strict normative compliance.

Currently, the registration of new interested parties has been suspended until they are redefined the new procedures. They will also notify the current members the changes made, as well as all the information related to the data processing based on the new standards that are being implemented, and will obtain the authorization again for each of the treatments planned for the sports club members. These works will be implemented within the maximum term of one month.

Due to the characteristics of our club, the way of publicizing the activities that we carry out, as well as, the championships in which our athletes participate are through social networks, all parents know about it and they themselves share this content on their own social networks in addition to publishing those images that they themselves register in the events. All the images and news that are published on social networks have to do with the development of sports activity and Any image that is not decorous or in bad taste is discarded. All parents are connoisseurs who can ask us to remove any image in which your daughter appears just by requesting it.

The club groups its members into groups of 5 or 6 participants, the parents of our gymnasts are aware that images and news of the events on our social networks and, until now, no parent or guardian has requested that we not post images of their children. It can be hard to explain

a girl why can't she put herself in the photo with her classmates when they receive a medal or participate in an event, even so, we will scrupulously respect the wish of the parents and not to publish or blur the images of those children of the that we do not have the express authorization of the parents or legal guardian. Regarding the WhatsApp groups they have a very small number of members and are limited to the group of parents in which their daughter is (5 or 6 members per group), the intention is to have a means of communication shared among all, we do not force nobody to be in the group and it is the power of each one to leave the group when so consider. It is a means of communication and coordination between parents and, for the next school year, we will expressly require prior authorization to participate in group chat.

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We want to convey to you that at no time is our performance the result of bad faith but of the use of technology to facilitate the communication and dissemination of the activity of our athletes. We have always been very strict with data processing what we do when we are aware that they refer to minors, to reinforce the controls and their suitability, as we indicated, we have contracted the services of an external consultant specializing in adaptations to regulations in matter of data protection that is collaborating with us for the redefinition and implementation of new procedures and methods”.

FOURTH: On 09/20/21, by the Director of the Spanish Agency for

Data Protection agreement is issued for the admission of processing of the claim

filed by the claimant, in accordance with article 65 of the Law

LPDGDD, when appreciating possible rational indications of a violation of the norms in the scope of the powers of the Spanish Data Protection Agency.

FIFTH: Dated 10/26/21, in view of the facts and the verifications

carried out by this Agency, the Director of the Spanish Agency for the Protection of Data, agreed to initiate sanctioning proceedings against the entity claimed for:

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The infringement of article 13 of the RGD, by not properly informing the user about the treatment of their personal data according to the regulations in force, with an initial penalty of 2,000 euros (two thousand euros).

The infringement of article 7 of the RGD, by not allowing the user to offer a free and voluntary consent to the processing of your personal data to each of the purposes to which the personal data obtained from athletes, different for those who were actually obtained, with a initial penalty of 2,000 euros (two thousand euros).

SIXTH: The initiation of the file was notified on 11/07/21, as of today, there is no that the respondent has made allegations to the agreement to initiate the procedure.

In this sense, article 64.2.f) of the LPACAP -provision reported by the claimed in the agreement to open the procedure- establishes that, "if no they make allegations within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the responsibility imputed, may be considered a resolution proposal."

In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the current regulations attributed to the defendant and the sanction that could be imposed. Therefore, taking into

consideration that the respondent has not made allegations to the agreement to start the file and in accordance with the provisions of article 64.2.f) LPACAP, the aforementioned Initiation agreement is considered in this case resolution proposal.

PROVEN FACTS

1º.- According to the claim, the Club Deportivo Ritmo de Andalucía has not implemented adequate measures in terms of data protection, for the management and custody of details of its members and relatives, and points out that the registration document

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imposes a general consent for the transfer of images of the associates, together to other data processing, also noting that data of minors is exposed in social networks and provides the images from the entity's page in the social network ***RED.1, and the registration documents for the Club in the seasons 2019/2020 and 2020/2021, where a general consent for the assignment is established image of associates.

2º.- According to the claimed entity, when they became aware of the claim, the registration of new registrations was suspended until they were redefined the new data protection procedures. They also indicated that the current members will be notified of the changes made in this matter, as well as as, all the information related to data processing based on the new standards that are being implemented, and authorization will be sought again to each of the treatments provided to the members of the sports club. It indicated that these works would be completed and implemented on September 15, 2021.

3º.- In the registration form for athletes in the club provided in the

claim, the only information provided about the purposes of the

treatment of personal data obtained from athletes is as follows:

“C.D. REGISTRATION RHYTHM OF ANDALUCIA 2020-2021 CLUB RULES: (...)

The transfer of image rights to the club is mandatory. The photos and videos that

let's perform gymnasts, as well as scheduled events, you can view them in

the ***RED.1: Club Deportivo Ritmo de Andalucía and on Instagram C.D. Rhythm of

Andalusia(...)".

FOUNDATIONS OF LAW

I.- Competition

Is competent to resolve this Sanctioning Procedure, the Director of the

Spanish Agency for Data Protection, by virtue of the powers that article 58.2 of the

Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16,

regarding the Protection of Natural Persons with regard to the Treatment of

Personal Data and the Free Circulation of these Data (RGPD) recognizes each

Control Authority and, as established in arts. 47, 64.2 and 68.1 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and Guarantee of

Digital Rights (LOPDGDD).

II.- About the lack of information that is provided to the interested parties about the

treatment of your personal data.

Regarding this point, article 13 of the RGPD, establishes the information that must be

provide the interested party at the time of obtaining their personal data:

“1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide: a)

the identity and contact details of the person in charge and, where appropriate, of their

representative; b) the contact details of the data protection officer, in his

case; c) the purposes of the treatment to which the personal data is destined and the basis

legal treatment; d) when the treatment is based on article 6, paragraph 1,

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letter f), the legitimate interests of the person in charge or of a third party; e) the recipients or

the categories of recipients of personal data, if any; f) where appropriate, the

intention of the controller to transfer personal data to a third country or

international organization and the existence or absence of an adequacy decision

of the Commission, or, in the case of the transfers indicated in articles 46 or 47 or

Article 49, paragraph 1, second paragraph, reference to adequate guarantees or

appropriate and the means to obtain a copy of them or the fact that

have lent.

2. In addition to the information mentioned in section 1, the person in charge of the

treatment will facilitate the interested party, at the moment in which the data is obtained

personal, the following information necessary to guarantee data processing

fair and transparent: a) the period during which the personal data will be kept or,

when this is not possible, the criteria used to determine this period; b) the

existence of the right to request access to data from the data controller

related to the interested party, and its rectification or deletion, or the limitation of its

treatment, or to oppose the treatment, as well as the right to the portability of the

data; c) when the treatment is based on article 6, paragraph 1, letter a), or the

Article 9, paragraph 2, letter a), the existence of the right to withdraw consent in

any time, without affecting the legality of the treatment based on the

consent prior to its withdrawal; d) the right to file a claim with a control authority; e) if the communication of personal data is a requirement legal or contractual, or a necessary requirement to enter into a contract, and if the The interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data; f) the existence of decisions you automate, including profiling, referred to in article 22, paragraphs 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party”.

In the present case, the only information provided by the respondent entity on the processing of personal data when the interested party fills in the form registration is (...) It is mandatory to transfer image rights to the club. The pictures and videos that we make to the gymnasts, as well as scheduled events, may watch them at ***RED.1: Club Deportivo Ritmo de Andalucía and on Instagram CD. Rhythm of Andalusia (...). ”.

These facts are constitutive of an infraction, attributable to the claimed party, for violation of article 13 of the RGPD, by not properly informing the users interested parties, of the purposes to which they will allocate their personal data at the time to collect your personal data.

Article 72.1.h) of the LOPDGDD, considers "very serious", for prescription purposes, “The omission of the duty to inform the affected party about the processing of their data in accordance with the provisions of articles 13 and 14 of the RGPD”

This infraction can be sanctioned with a maximum fine of €20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the of greater amount, in accordance with article 83.5.b) of the RGPD.

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In accordance with the precepts indicated, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction to be imposed in the present case, it is considered appropriate to graduate the sanction in accordance with the following aggravating criteria established in article 83.2 of the RGD:

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The duration of the infraction, taking into account that the complainant attached to the writ of claim the forms of the last two seasons:

2019/2020 and 2020/2021, where the lack of information on the treatment of personal data according to current regulations, (section a).

The balance of the circumstances contemplated in article 83.2 of the RGD, with regarding the infraction committed, by violating the provisions of article 13 of the RGD, makes it possible to set a penalty of 2,000 euros (two thousand euros).

IV.- On the non-existence of a mechanism that makes it possible to give free consent and voluntary for each of the purposes to which the data processing will be dedicated.

With respect to the facts indicated in point II, recital (32) of the RGD

"The

establishes, on the consent to treat personal data that:

Consent must be given by a clear affirmative act that reflects a

free, specific, informed, and unequivocal manifestation of the interested party's

accept the processing of personal data that concerns you, such as a

written statement, including by electronic means, or an oral statement.

This could include checking a box on an internet website, choosing parameters technicians for the use of services of the information society, or any other statement or conduct that clearly indicates in this context that the data subject accepts the proposal for the processing of your personal data. Therefore, the silence pre-ticked boxes or inaction should not constitute consent.”

Art 4.11 of the RGPD defines the consent of the interested party for the treatment of their data, such as: "all manifestation of free will, specific, informed and unequivocal calls by which the interested party accepts, either by means of a declaration or a clear act. affirmative tion, the treatment of personal data that concerns you”.

In this sense, article 6 of the RGPD, details in its section 1 the assumptions in which that the processing of third party data is considered lawful:

“1. The treatment will only be lawful if at least one of the following is met conditions: a) the interested party gave their consent for the processing of their data personal for one or more specific purposes; b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application to his request for pre-contractual measures; c) the treatment is necessary for the compliance with a legal obligation applicable to the data controller; of Processing is necessary to protect the vital interests of the data subject or another Physical person; 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 data controller; f) the treatment is necessary for the satisfaction of legitimate interests pursued by the data controller or by a third party,

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provided that said interests do not prevail the interests or rights and fundamental freedoms of the interested party that require data protection personal, in particular when the interested party is a child (...)."

Likewise, article 6.2 of the LOPDGDD indicates, on the treatment based on the consent, that:

"two. When it is intended to base the processing of the data on the consent of the affected for a plurality of purposes, it will be necessary to state specific and unequivocal that said consent is granted for all of them.

For its part, article 7 of the RGPD includes the conditions for consent made by the interested party:

1. When the treatment is based on the consent of the interested party, the person in charge

You must be able to demonstrate that you consented to the processing of your data personal.

2. If the data subject's consent is given in the context of a written statement

that also refers to other matters, the request for consent will be presented in in such a way that it is clearly distinguishable from other matters, in an intelligible and easy access and using clear and simple language. No part will be binding of the statement that constitutes an infringement of this Regulation.

3. The interested party will have the right to withdraw their consent at any time. The

Withdrawal of consent will not affect the legality of the treatment based on the consent prior to withdrawal. Before giving their consent, the interested party will be informed of it. It will be as easy to withdraw consent as it is to give it.

4. When assessing whether consent has been freely given, it shall be taken into account in the greatest extent possible whether, among other things, the performance of a contract,

including the provision of a service, is subject to consent to the processing of

personal data that is not necessary for the execution of said contract.

Well, in accordance with everything stated above, the processing of data

personal requires the existence of a legal basis that legitimizes it, as it is, in this

case, the existing contractual relationship between the athlete and her parents with the club

sports through the registration form in the club. But if, in addition, the entity

wishes to carry out a treatment of personal data, in this case, the images

recorded of the athletes for other unrelated purposes, such as their publication on networks

must obtain your consent given validly and expressly

for each of those different purposes. It is not valid, therefore, to mark

obligatorily the acceptance box in the registration form without giving the

option to the user to give free and individualized consent for each of the

purposes unrelated to the main one, that is, unrelated to registration in the sports club and

if it is the case the inscription in the corresponding Federation.

Known facts about the consent given are constitutive of a

infringement, attributable to the claimed, for violation of article 7 of the RGPD

mentioned, by not allowing the user to make a free and voluntary consent of the

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processing of personal data for other unrelated purposes, such as the publication of

images of athletes in social networks.

Article 72.1.c) of the LOPDGDD considers it very serious, for prescription purposes,

“Breach of the requirements demanded by article 7 of the RGPD”.

This infraction can be sanctioned with a maximum fine of €20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the of greater amount, in accordance with article 83.5.b) of the RGPD.

In accordance with the precepts indicated, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction to be imposed in the present case, it is considered appropriate to graduate the sanction in accordance with the following aggravating criteria established in article 83.2 of the RGPD:

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The duration of the infraction, taking into account that the complainant attached to the writ of claim the forms of the last two seasons:

2019/2020 and 2020/2021, where a general consent for the treatment of personal data of athletes, (section a).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with

Regarding the infraction committed, by violating the provisions of article 7 of the RGPD, makes it possible to set a penalty of 2,000 euros (two thousand euros).

V- Total sanction:

The balance of the circumstances contemplated in the previous sections, with

Regarding the infractions committed, by violating the provisions of articles 13 and 7

of the RGPD, allows a total penalty of 4,000 euros (four thousand euros) to be set: 2,000

euros for the infringement of art. 13 of the RGPD and 2,000 euros for the infringement of art. 7 of the GDPR.

In accordance with the foregoing, by the Director of the Spanish Agency for Data Protection,

RESOLVES:

FIRST: IMPOSE RITMO DE ANDALUCÍA SPORTS CLUB, with CIF.:

G23718299, the following sanctions, for:

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The infringement of article 13 of the RGPD, by not properly informing the user about the treatment of their personal data according to the regulations in force, a fine of 2,000 euros (two thousand euros).

The infringement of article 7 of the RGPD, by not allowing the user to offer a free and voluntary consent to the processing of your personal data to each of the purposes to which the personal data obtained from athletes, different for those who were actually obtained, a penalty of 2,000 euros (two thousand euros).

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SECOND: NOTIFY this agreement to initiate sanctioning proceedings to the SPORTS CLUB RITMO DE ANDALUCIA.

THIRD: Warn the sanctioned party that the sanction imposed must make it effective

Once this resolution is executed, in accordance with the provisions of the

Article 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations, within the voluntary payment period indicated in the

Article 68 of the General Collection Regulations, approved by Royal Decree

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

December, by depositing it in the restricted account N° ES00 0000 0000 0000

0000 0000, opened in the name of the Spanish Agency for Data Protection in the

Bank CAIXABANK, S.A. or otherwise, it will be collected in executive period.

Received the notification and once executed, if the date of execution 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 month or immediately after, and if between the 16th and last day of each month, both inclusive, the payment term It will be until the 5th of the second following month or immediately after.

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

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure (article 48.6 of the LOPDGDD), and in accordance with the provisions of articles 112 and 123 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations, the interested parties may optionally file

appeal for reconsideration before the Director of the Spanish Data Protection Agency within one 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 Court, in accordance with the provisions of the

Article 25 and in section 5 of the fourth additional provision of Law 29/1998, of

July 13, regulatory of the Contentious-administrative Jurisdiction, in the term of

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

provided for in article 46.1 of the aforementioned legal text.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations

Public, the firm resolution may be provisionally suspended in administrative proceedings if 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 by

writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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Sea Spain Marti

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