

No. Fax: 11.17.001.009.246 May 11, 2022 DUPLICATED AND BY ELECTRONIC MAIL Decision Publication of Photographic and Audiovisual Material of a Minor on Social Media A. Incidents of the Case 1. A complaint was filed with my Office on November 3, 2021, by XXXXX (hereinafter the "complainant"), regarding the publication of photographic and audio-visual material involving his minor son, XXXXXX, on Social Media by XXXXXX. According to the complaint, in a match that the complainant's minor son had "with an athlete from XXXXXX's club and after XXXXXX's and/or representatives of his club disagreed with the decisions of the referee, he proceeded WITHOUT [his] permission and/or Club for which [his] son competes, in posting a video related to the match on Facebook. Following this (publication of personal data of a MINOR without approval) the name of [his] minor child has been removed due to comments made on the specific posts". The complainant attached relevant material, which shows XXXXX's post on Social Media. 2. From the material attached by the complainant (including screenshots), it appears that the match took place at the All Cyprus U18 Games, held on October 30, 2021, at Eleftheria Stadium under the auspices of the All Cyprus Judo Federation. From further investigation by my Office Officer on the website of the Pan-Cyprus Judo Federation, it appears that Club XXXXXX is under the Federation and XXXXXX is the head coach of that Club. In a specific screenshot, XXXXXX is shown posting a video 3. of the match between the two minor athletes, on a social media (Facebook), without first obtaining the complainant's permission. Along with the posting of the video in question, there was also the comment "XXXXXX" and underneath there were some comments from his Facebook friends. One could, by sequential actions such as searching for the official competition schedule from the website of the Federation (<https://www.cyprusjudo.com/>), identify the rival athlete, i.e. the complainant's son. 4. On 16 November 2021, my Office sent a letter to the complainant stating that because the judo matches in question were Pan-Cypriot and apparently related to a public event, one would not expect the same level of protection of their personal data. Of course, this would not be the case if it were a single intramural sporting event. Regarding the match comments, although they are not the subject of my Office, we had stated that they do not constitute a violation of personal data. After the telephone communication that the complainant had with an Officer of my 5. Office in the context of clarifications, he sent additional information to my Office on November 17, 2021, which were not originally attached to the complaint. Specifically, the complainant sent: 5.1 The letter dated June 05, 2018 to the All Cyprus Judo Federation (hereinafter the "Federation") from the XXXXX law firm, which represented the XXXXX judo academy (hereinafter the "Association"), in which the complainant's son is a student. In the said letter, the Union appealed to the Federation to communicate the letter to all Members of the Federation. According to the letter,

it came to the attention of the customers of the Association that photographs and videos of the Association's athletes were being published on various social media with the prior consent of the athletes and/or their guardians and/or the Association. He considered that the action in question constituted a violation of the right to protect the personal data of the athletes. Therefore, he requested, as before publishing any photographic or audio-visual material that includes an athlete of the Association, to address it, so as to ensure the relevant consent of the athlete and/or his guardian. Instagram etc), without (facebook, 5.2 The above letter was communicated by email, dated June 06, 2018, from the Federation to its members, stating the following:

"Please take seriously the letter from XXXXXX union that concerns the personal data of its athletes. The letter below concerns the Associations." 5.3 The recipients of the said message included the email address XXXXXX. 6. On December 13, 2021 and based on my duty to examine complaints, pursuant to article 57 (1)(f) of Regulation (EU) 2016/679, a letter was sent on my behalf to the Federation at the email address info@cyprusjudo.com 2 6.1 The Federation, after being informed in writing about the complaint, was called as by 31 December 2021, inform my Office regarding the following: 6.1.1 if it has a policy regarding the publication of photographic and audio-visual material by the unions which are affiliated to it, 6.1.2 if there is indeed one policy, how the said policy came to the knowledge of the unions, 6.1.3 if there are any circulars, notices that it sent to the unions that are subject to it, 6.1.4 what measures it has taken to fully harmonize it with the Regulation and if these measures have been adopted by the unions and to what extent, 6.1.5 if he has received a complaint from the union in question and if so, what was the decision he reached, 6.1.6 anything else deemed appropriate. 7. After the time limit for response that had been set (i.e. December 31, 2021) had passed, a reminder letter was sent on January 25, 2022 with an exclusive response deadline of February 2, 2022. 8. On March 30, 2022 and if the Federation did not had not responded at all to what was repeatedly asked of her, I issued a prima facie decision in which I found a lack of cooperation of the Federation with my Office and therefore a prima facie violation of Article 31 of the Regulation. The prima facie decision was sent to the Federation on March 31, 2022 by email to info@cyprusjudo.com and hand delivered to its Offices on April 4, 2022. 9. The Federation was summoned as soon as possible and no later from 15 April 2022: (a) of the prima facie decision and (b) state the reasons why it considers that there are no grounds for the imposition of any sanction and/or any mitigating factors, before I proceed to issue a Final Decision. 10. Unfortunately, to date, the Federation has not provided any response to the issues to which it was asked to respond. B. Legal Framework 10. Article 4(1) of the Regulation defines that "personal data" is "any information concerning an identified or identifiable natural person submits its positions in writing to my Office, in relation to the content 3 (" data subject");

an identifiable natural person is one whose identity can be ascertained, directly or indirectly, in particular by reference to an identifier such as a name, an identity number, location data, an online identifier or a or more factors that characterize the physical, physiological, genetic, psychological, economic, cultural or social identity of the natural person in question." 11. In Article 4(2) of the Regulation, processing is defined as "any act or series of acts carried out with or without the use of automated means, on personal data or sets of personal data, such as the collection, registration, organization , structuring, storing, adapting or altering, retrieving, searching for information, using, communicating by transmission, dissemination or any other form of making available, association or combination, restriction, deletion or destruction ",". 12. Furthermore, in Article 4(7) of the Regulation, a data controller is defined as anyone (the natural or legal person, public authority, agency or other entity) who, "alone or jointly with another, determine the purposes and the manner of the processing of personal data". 13. Article 4(11) provides that consent means "any indication of will, free, specific, explicit and fully informed, by which the data subject manifests that he agrees, by statement or by a clear positive action, to be the subject of processing the personal data concerning it". 14. Article 6 of the Regulation states that: "1. The processing is lawful only if and as long as at least one of the following conditions applies: a) the data subject has consented to the processing of his personal data for one or more specific purposes, b) the processing is necessary for the performance of a contract whose the subject of data subject is a contracting party or to take measures at the request of the data subject before entering into a contract, c) the processing is necessary to comply with a legal obligation of the controller, d) the processing is necessary to safeguard a vital interest of data subject or other natural person, e) the processing is necessary for the fulfillment of a task performed in the public interest or in the exercise of a public authority delegated to the data controller, f) the processing is necessary for the purposes of the legal interests that pursued by the controller or a third party, unless these interests are overridden by the interest or fundamental rights and freedoms of the 4 data subject that require the protection of personal data, in particular if the data subject is a child. Item f) of the first paragraph does not apply to the processing carried out by public authorities in the exercise of their duties."

15. With regard to Social Networking Media, recital (18) of the Regulation clarifies that: "(18) This regulation does not apply to the processing of personal data by a natural person in the context of exclusively personal or domestic activity and therefore without connection with some professional or commercial activity. Personal or household activities could include correspondence and address record keeping or social networking and online activity conducted in connection with such activities. However, this Regulation shall apply to controllers or processors who provide the means of processing personal data

for such personal or household activities." 15.1 Likewise, in Article 2(2)(c) of the Regulation, it is clarified that: "2. This regulation does not apply to the processing of personal data: c) by a natural person in the context of exclusively personal or domestic activity," 16. However, according to Jurisprudence which has developed around this issue (see Decision dated 16/12/2008, Satakunnan Markkinapörssi and Satamedia) personal or household activity does not include processing which is exposed to an unspecified number of persons. 17. Article 31 of the Regulation provides that, "the data controller and their executor cooperate, upon request, with the supervisory authority for the exercise of its duties.". 18. Based on Article 58(2), the Commissioner has all the following remedial powers: the processing and, where appropriate, the representatives "a) to send warnings to the controller or processor that intended processing operations are likely to violate provisions of this regulation, b) address reprimands to the controller or processor when processing operations have violated provisions of this regulation, c) instruct the controller or processor to comply with the requests of the subject of of data for the exercise of his rights in accordance with this regulation, 5 d) to instruct the controller or the processor to make the processing operations comply with the provisions of this regulation, if necessary, in a specific way and within a certain period , e) to instruct the controller n a) announces the breach of personal data to the data subject, f) imposes a temporary or definitive restriction, including the prohibition of processing, g) orders correction or deletion of personal data or restriction of processing pursuant to articles 16, 17 and 18 and ordering the notification of such actions to recipients to whom the personal data was disclosed pursuant to Article 17(2) and Article 19, h) to withdraw the certification or to order the certification body to withdraw a certificate issued in accordance with Articles 42 and 43 or to order the certification body not to issue certification if the certification requirements are not met or are no longer met, i) to impose an administrative fine under Article 83, in addition to or instead of the measures referred to in this paragraph, depending on the circumstances of each individual case case, j) to order its suspension circulation of data to a recipient in a third country or an international organization." 19. Furthermore, Article 83 of the Regulation, which concerns the general conditions for imposing administrative fines, provides, among other things, that: "1. Each supervisory authority shall ensure that the imposition of administrative fines in accordance with this article against violations of this regulation referred to in paragraphs 4, 5 and 6 is effective, proportionate and dissuasive in each individual case. 2. Administrative fines, depending on the circumstances of each individual case, are imposed in addition to or instead of the measures referred to in Article 58 paragraph 2 points a) to h) and Article 58 paragraph 2 point j). When deciding on the imposition of an administrative fine, as well as on the amount of the administrative fine for each individual case, the following

shall be duly taken into account: a) the nature, gravity and duration of the infringement, taking into account the nature, extent or purpose of the relevant processing, as well as the number of data subjects affected by the breach and the degree of damage they suffered, b) the fraud or negligence that caused the breach, c) any actions taken by the controller or the processor to mitigate the damage suffered by the data subjects, d) the degree of responsibility of the controller or the processor, taking into account the technical and organizational measures they apply pursuant to articles 25 and 32, 6 e) any relevant previous violations of the controller or processor, f) the degree of cooperation with the control authority to remedy the violation infringement and the limitation of its possible adverse effects, g) the categories of personal data affected by the breach, h) the way in which the supervisory authority was informed of the breach, in particular if and to what extent the data controller or processor notified the violation, i) in the event that the measures referred to in Article 58 paragraph 2 were previously ordered to be taken against the controller involved or the processor in relation to the same object, the compliance with said measures, j) the observance of approved codes of conduct in accordance with article 40 or approved certification mechanisms in accordance with article 42 and k) any other aggravating or mitigating factor resulting from the circumstances of the specific case, such as the financial benefits obtained or losses avoided, directly or indirectly, from the violation." C.

Rationale 20. On October 30, 2021, the All-Cypriot U18 Judo Games were organized, in which, among others, the complainant's son participated. A member of the Federation, i.e. XXXXX, a coach of a judo club belonging to the Federation, made a video recording and then posted on a controversial phase of the videotape in which the complainant's son was also depicted. As a result, a complaint was sent to my Office by the father of the minor. November 3, 2021. 21. Prior to the incident and from material sent by the complainant, on June 5, 2018, the Federation received a letter from the XXXXXX Union, through the XXXXX law firm. In this Association, the complainant's son is also an athlete. The Association requested, as before publishing any photographic or audio-visual material that includes an athlete of the Association in question, that it be addressed to them in order to obtain the relevant consent from the athlete and/or his guardian. The flag was placed, after it was established that there were incidents of the publication of photos and videos of the athletes on various NQD (Facebook, Instagram, etc.), without the prior consent of the athletes themselves and/or their guardians and/or the association. 22. The Union requested from the Federation that the entire letter dated June 5, 2018. On June 6, 2018, the Federation acted as the new controller in relation to this letter, since it had accepted and communicated it on behalf of the Association to the other Members of the Federation, addressing them and inviting them to receive " seriously taking into account the letter from the

XXXXXX union ... ". 7 23. This was followed by the posting of the video by XXXXXX in the NCR and the reporting of this case to my Office (see par. 19). 24. On December 13, 2021, in the context of investigating the complaint in question, requested by the Federation to provide my Office with specifics information directly related to the incident under investigation. After it passed first deadline set (December 31, 2021), a letter was sent reminder on January 25, 2022, with a new response time of 2 February, 2022. The new window of time also passed, with no response from the Federation on the questions that had been raised and which have immediate in relation to the complaint under investigation. Subsequently, on March 30, 2022, the my prima facie decision in which I found a violation of its provisions Regulation and in particular Article 31. The said decision was notified to Federation.

25. Based on Article 31 of the Regulation, the Federation should have cooperate with my Office, articulating her positions on the matter as her own had been requested, something he has not done to date.

26. Considering the above and the fact that the Federation does not have sends her own posts to date, I find, once again, lacking cooperation with my Office by the Federation and therefore a violation of it Article 31 of the Regulation.

D. Conclusion

27. Having regard to the above and based on the powers granted to me by Articles 58 and 83 of Regulation (EU) 2016/679, article 24(b) of the Law 125(I)/2018, I repeat my finding of a violation on the part of Ms. of the complaint:

(a) of Article 31 of the Regulation, since he did not cooperate with my Office except the repeated appeals and did not give any answer to the questions they had

be taken into account.

28. Unfortunately no mitigating factor can be weighed in her favour

Federation, since she did not raise any mitigating factor herself, as she had

requested by my prima facie decision dated March 30, 2022. There was

complete lack of cooperation. I consider that enforcement is justified in the circumstances

of the administrative sanction provided for in Article 58(2)(i), i.e. enforcement

administrative fine pursuant to Article 83 of the Regulations.

29. In light of the above,

I HAVE DECIDED to impose the following administrative sanction:

- To the Pancyriot Judo Federation, an administrative sanction of €5,000.00.

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Irini Loïzidou Nikolaidou

Data Protection Commissioner

Personal Character

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