 File No.: PS/00063/2021

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and with

based on the following

BACKGROUND

FIRST: On 09/30/2020 it has entry in the Spanish Protection Agency

of Data (AEPD) the claim presented by Ms. A.A.A., with NIF ***NIF.1 (in

hereinafter, the representative of the claimants), on behalf of Ms. B.B.B., with

NIF ***NIF.2 (hereinafter claimant 1) and D.ª C.C.C., with NIF ***NIF.3 (hereinafter

claimant 2).

The claim is directed against CLUB DEPORTIVO SAN ROQUE, E.F.F., with CIF

G80588098 -C.D. San Roque- (hereinafter, the claimed or the club) and deals with the

treatment that the club has carried out of the personal data of claimants 1 and 2

and their seven-year-old children.

The claimants, mothers of minors integrated into the soccer club of the

School ***COLEGIO.1 and affiliated to the Royal Football Federation of Madrid (RFFM)

in the Prebenjamines category, they received two calls on 06/17/2020

calls from the number of ***PHONE.1 of who identified himself as the

coordinator of the claimed club in order to offer them that their children play in

your team next season. They state that they did not provide the claimed person with their data

contact nor had they previously had any relationship with him, despite which the

coordinator knew his mobile phone number, the name of his minor children, the

name of the club in which they were registered, their circle of friends

within his soccer team and the "form of the game".

The representative of the claimants considers that the treatment carried out violates the

Article 5 of Regulation (EU) 2016/679, of April 27, of the European Parliament and of the

Council, for the protection of natural persons with regard to the treatment of

personal data and the free circulation of these data and by which the

Directive 95/46/CE (RGPD) and does not comply with the principles of legality, loyalty and transparency.

It adds that the claimants were also not informed in the terms of article 14

of the GDPR.

It also invokes the violation of article 26 of Book IV of the General Regulations of

the Madrid Royal Football Federation (hereinafter the R.G. of the RFFM) that

"considers prohibited contact for recruitment with players from other clubs

while they are federated, but with the express authorization of the

themselves."

The representative of the claimants, before the explanation that on the origin of the

data of minors gave the respondent in his response to the access exercised

by the claimants, affirms that "the data of the children of my clients are not

can understand in no case from sources accessible to the public with

own purposes." To this end, include in the claim letter a link to the page

RFFM website from which, he says, it is possible to obtain information on the players -

exclusively the name and surnames - although it warns that on the date on which

submits the claim, the data cannot be accessed because the website is not

is active then, since it is updated at the beginning of each season.

Provide these documents with the claim:

(i) Evidence of the emails that the claimants sent to the claimant exercising

the right of access to your data: These are the certificates issued by the company

Safe Creative, S.L., relating to sending the claimant two emails to the

address ***EMAIL.1, in which they request access to their personal data and those of

their minor children; to be informed of the purpose of the treatment carried out; of the

recipients to whom the data had been communicated or was planned to be communicated;

of the periods foreseen for the conservation of the data or of the criteria for

determine this term; whether there were automated data processing or

profiling and the importance and expected consequences of such

treatment. The document dated 06/23/2020 certifies the email sent

by claimant 1 and dated 06/24/2020 certifies the mail sent by the

claimant 2.

(ii) The response of the respondent to the requested access, dated 07/03/2020. Response

which is identical for both claimants except on a few points. In both

in writing, the respondent reports the identity of the data controller; of the CIF;

of the phone number; address and email address. It also reports

the purpose of data processing, an offer for their children to play in the

club; that it does not communicate data to third parties; that does not make international transfers of

data; that it does not use data profiling techniques and that the period of conservation of

the data is for five years "according to the civil regulations of the prescriptions". That

may request the rectification or deletion of their personal data or the limitation of the

processing of data relating to your person or oppose such processing as well as

file a claim with the Spanish Data Protection Agency.

In its response to the claimants, it informs them that “The end of the treatment was the

offer to play in our Club from your son, which you accepted and treated us in a

kind, which we appreciate.” Regarding the categories of data processed, it indicates

which are his name and telephone number, and about the origin of the data he says that "they were provided by a person known to you, which we understood had your consent." Regarding the data of the youngest son, it says that “Regarding the categories of data subject to treatment of your child [in the document the name and two surnames of the minor] we inform you that we do not have any data of personal character except those that are publicly accessible through the federative record of the RFFM.”

(iii) A copy of the General Regulations of the Royal Madrid Football Federation.

(iv) The power of attorney granted by the claimants in favor of their representative to “manage all the procedures to be carried out before the Agency Spanish data protection in order to protect the privacy of its people and

those of their minor children.” It is signed by those represented and the representative on 09/16/2020. It incorporates the copy of the DNI of the three.

SECOND: The AEPD, in view of the facts set forth in the claim, in order to evaluate its admissibility for processing, transfers it to the respondent so that in the period of one month, provide an explanation of the facts denounced, detail the measures adopted to prevent situations from occurring in the future similar and proceed to communicate its decision to the claimants.

The document was notified to the respondent by electronic means. was made available in the electronic headquarters on 10/29/2020, with the rejection occurring on 11/09/2020, as it appears in the certificate issued by the FNMT that is in the file. It was reiterated

notification by mail and was delivered on 11/18/2020.

On 12/21/2020, the Agency receives the response from the claimant to the request informative of the Subdirectorate of Inspection in which it offers an explanation of the events that occurred, informs of the measure adopted to avoid similar incidents in the future and requests that the claim not be admitted for processing. In short, it exposes Next:

- Considers that the claim is summarized in the "Unlawful treatment of information and not to state how the data is obtained, as well as the information of their children by sources not accessible to the public.
- Explains that on 06/17/2020 a Prebenjamines football match was held between the claimed club and the School ***COLEGIO.1, to which the children under the age of the claimants, which allowed him to know the manner of play of all the players and "Given that each player has his name on the shirt, it is not difficult to identify the name of a player with his form of play".
- That in his club there are players who are students of that school and among them know and express their interest in playing together and that "we do not process data of these players beyond public data or those known for holding matches".
- That they informed a father of his club, D. D.D.D. whose son studies in that school, our interest in the players "and we asked if he could get in touch contact their parents in case they are interested in them playing in our Club for the next season." It indicates that "This father facilitated the contact of these mothers through a friend of these mothers and who share a WhatsApp group, so we understand that they have communicated our interest and are satisfied with which we call them." "We understood by this fact his manifestation of free will and informed of the reason for our request and our basis for requesting your

telephone as a means of contact.

- That in the telephone contact maintained with the claimants they identified themselves in all

time and that even one of them returned the call requesting a day to be able to

test your child.

-That the soccer game took place on 06/17/2020 and that in this soccer category the

players are released at the end of the season, "which occurs when you have

this match took place, (June 17)", and the calls to the mothers were made "in days

later", so article 26 of the General Regulations of the

RFFM, contrary to what the representative of the claimants maintains.

- Regarding the measures adopted to avoid events such as the one that occurred, he explains that,

since they have implemented all the necessary ones to avoid the violation of

the legal principles whose compliance is questioned in the claim made

against him, "the only thing left to do was remonstrate with those who have effectively been able to cause a

punctual and involuntary violation of these principles implanted in the philosophy and

club practice. The coordinator is informed of the need to request a document

signed that authorizes the call and the reasons for it to the parents."

THIRD: On 02/01/2021 the Director of the AEPD issues a resolution admitting

processing the claim.

The agreement for admission to processing was electronically notified to the representative of the

claimants on 02/01/2021.

FOURTH: On 06/25/21 the Director of the Spanish Agency for the Protection of

Data agrees to initiate a sanctioning procedure against the claimed party in accordance with provided in articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of article 6.1 of the RGPD, typified in article 83.5.a) of the GDPR.

The opening agreement provided that the corrective measure of warning (article 58.2.b, of the RGPD) and order the claimed party, in accordance with article 58.2.g of the RGPD, which proceeded to the deletion of the personal data of the Claimants 1 and 2 and their respective minor children.

FIFTH: The agreement to open the sanctioning procedure was notified to the claimed electronically. It was made available on 06/28/2021 and the rejection of the notification after ten days in accordance with article 43.2. of the LPACAP, with the effects provided for in article 41.5 of the aforementioned law, as accredits the FNMT certificate in the file.

The respondent makes no objections to the initial agreement.

SIXTH: On 09/29/2021, the instructor of the procedure agrees to open the a test phase and the practice of the following steps:

Consider reproduced for the purposes of evidence the claim presented by the claimants 1 and 2 and their attached documentation, as well as the documents generated and obtained by the Subdirectorate General for Data Inspection on the occasion of the Transfer of the claim and the informative request to the respondent.

Evidence was practiced (i) before the defendant; (ii) before the RFFM and (iii) before the claimants.

Yo. Request for evidence to the claimed:

The letter addressed to the defendant, in which he is informed of the opening of the proof and several proof proceedings are requested, it was notified electronically in date 09/29/2021 producing the rejection of the notification in accordance with article 43.2. of the LPACAP, as evidenced by the certificate of the FNMT that works in the proceedings. However, this Agency reiterated the notification by postal mail which is recorded received by the respondent on 10/28/20210.

The respondent is required to report and provide:

1. What was the legal basis for the treatment of the personal data of the players minors and their respective mothers on the occasion of telephone calls who directed them.

2. Documentary evidence of the exact date on which the calls were made phone calls to claimants.

3. Copy of the record of treatment activities (RAT) of the Club

On 11/15/2021, the respondent's response to the issues raised with which it provides two screenshots relating to "Details of the call history" and a copy of the RAT of the Club.

1. Regarding the legal basis of the treatment carried out, the respondent says:

"The legal basis for the processing of information is the legitimate interest of the data controller." "The purpose is the communication of the interest of the responsible for providing proof of access to the club". And offers this explanation:

"Considering the weighting of the data processing of minors,

We communicate that they are public access through the Royal Football Federation of Madrid. These minors express to their friends and players of our club their

interest in playing for our club and one of his reasons is that his club has this

activity as extracurricular and due to the Covid situation, your school would suspend the

extracurricular activities. Likewise, it is publicly accessible by wearing your bib number and

name on the shirts of the matches they play."

"In compliance with our obligations under the RGPD and LOPDGDD

we have established an informative clause that must be signed by all the players or

in the case of minors, their parents or legal guardians when tests or

They become part of our team."

"Analyzing the interest of the Responsible and the interest of the players in an analysis of

the least intrusive and most transparent way and from the maximum respect when dealing with

minors and in our obligation of legal compliance, it is requested through a

parent of our club inform your parents of our interest in

evaluate and test their children so that they can play in

our club. We understand that the treatment is necessary for the legitimate interest of the

Responsible and the interest shown by minors.

"It is culturally and socially assumed by custom that teams offer their clubs

to considering players with options to progress. the community at large

acknowledges and genuinely expects that data controllers can act and

treat the data in pursuit of said interest."

"We did not find in our assessment any alternative method that allows us to

communicate our interest and purpose to the interested parties and that likewise allows us to

comply with our legal obligations to achieve the objectives pursued and

with the least impact for stakeholders. The express authorization of the interested parties

for the processing of your information and the establishment of contact is not

we find viable until contact has been established.

Regarding the treatment of the personal data of the claimants, it specifies:

“Providing us with the data through an intermediary with the clear purpose that

we communicated to their mothers, in this case we understand that they gave their consent

so that we could communicate with them, establishing an "action" or an act

clear affirmative that reflects a manifestation of free, specific, informed will

and unequivocal of the interested party to accept the processing of personal data

that concern him.”

“The data provided to us was your name (not surnames) and contact telephone number.

attending to the quality of the data since for the communicated purpose it is not

need to process more data.

“Analyzing the data provided, we understand that it is proportional to the purpose

raised for communication and test offer in our club, establishing

a single call from us in relation to the purpose communicated to the

mothers and with the probability that there is no interference in the interests or

fundamental rights or freedoms of the data subjects.

“Our communication and the purpose for which we request your data we consider

that allow the decision of the interested party to oppose or not, to the delivery of their data.

If, on your part, no interest had been expressed and we were not summoned to a

subsequent call, we would proceed to a voluntary exclusion on our part of the

information processing.”

“After the above, we understand that those affected gave their consent to the

processing of your data for the establishment of contact for the purpose

communicated by providing us with your data since otherwise we could not have

established that contact."

"Likewise, we understand that the impact on the rights of the interested parties is null.

or very low since on 07/07/2020 we attended to your exercised right of access

before our entity and in it we communicate our intention to attend to your

rights and especially that he could exercise the right of opposition as stipulated

in article 14."

"We understand that this condition complements the necessity requirement, under the

article 6 and that requires a relationship between the treatment and the interest pursued."

"In attention to the protection of the interested parties, we have taken into account the interest

of those affected and not only their fundamental rights and freedoms."

"The terms <<interests>> and <<rights>> we understand that they must be interpreted

in a broad sense We understand that it is necessary to also take into account the

<<interest>> of those affected, not only their fundamental rights and freedoms, the

which we respect at all times and so we let their mothers know."

Regarding the "guarantees offered to the interested parties, we understand that they are sufficient and

adequate to reduce the impact of the data subjects and the non-use of

improper. We offer the attention of your rights and our disposition before any

pressure from third parties because of their position with them."

(emphasis ours)

2. Provide two screenshots related to "Call History Details". In the

document there are five registered calls, all from June 17, made between the
5:34 p.m. and 8:23 p.m., all of them directed to, or coming from, the line
number ***PHONE.2. There are two outgoing calls in the history, addressed to
that number, made at 5:34 p.m. Both with the following comment: “I don't know.
was able to contact." From that telephone number there are two incoming calls, to which
8:08 p.m. and 8:20 p.m., with these comments, respectively: “it rang 8
times”, “rang 6 times”. There is an outgoing call directed to that number at 8:23 p.m.
hours.
Thus, it can be concluded from the call history provided that the coordinator of the
claimed club was unable to contact the claimant holder of the number by telephone
telephone until 8:23 p.m., despite the fact that he tried twice without success (at
5:34 p.m.) and despite the fact that the recipient of the call returned the call,
also without success, on two occasions, at 8:08 p.m. and at 8:20 p.m.
3. Copy of the RAT of the club prepared on 06/14/2019 and updated on 11/23/2019.
The document includes a total of thirteen processing activities and for each
one identifies the treatment in question, includes the data of the person in charge of
treatment and the DPD, informs of the basis of legality, the term of conservation of the
data, the origin of the data and the groups affected, the category of data
treated, of the security measures, of the data communications and of the
international transfers.
Recorded processing activities include consistent processing
in “Management of players” (RAT-01-001) and “Management of minor players”
(RAT-01-0002) The treatment activity called
"Prospecting Players" (RAT-01-012) Regarding the latter, the document offers
the next information:
- "1. Identification of the treatment”. “Purpose description”: “Data management of

potential players as well as their parents or guardians in the case of minors

to offer them participation in the following seasons in our club."

- "4. Legality of the treatment. Basis of legality. The treatment is based on

consent of the affected party.

- "5. Conservation terms. They will be kept for the time necessary to

comply with the purpose for which they were collected and to determine the possible

responsibilities that may arise from said purpose and the treatment of the data.

data. Once the aforementioned period has expired, they will be deleted or at the request of the affected party."

- "6. Description of the treatment." "Origin and provenance of the data. of own

affected person or his legal representative. Affected groups: People

interested in passing the tests to belong to the club". (emphasis ours)

- "7. Categories of processed data. Data typology." Mention the name and

surnames, telephone, email and handwritten signature.

The treatment called "Contact Agenda" of the club (RAT-

01-010) of which it is specified that the basis of legality of the treatment "will be the

consent of those affected.

(ii) Request for proof to the RFFM.

The brief was notified electronically on 09/29/2021 and was accepted by its addressee

On the same date. More than passed the term granted to evacuate the procedure

without a response having been received, the test request is reiterated by means of a

new writ notified electronically on 10/27/2021. Requested:

1.To inform if the end date of the 2019/2020 season was the same for

all the clubs that participated in the official Prebenjamines competition or if

differed from one club to another depending on the date on which each had celebrated

the last game of the competition. If so, you are requested to report the date of

completion of the 2019/2020 season in the Prebenjamines category for the

CLUB DEPORTIVO SAN ROQUE, E.F.F., and for the School ***COLEGIO.1.

2. Explain if the procedures to register as an amateur player in a

license of that RFFM are practiced by the interested party or his representative, directly

before the RFFM or exclusively before the club to which the player belongs.

3.To report if during the 2019/2020 season they were discharged with

license of that federation in the category of Prebenjamines the children who formed

part of the football club of the School *** COLEGIO.1 whose names and surnames are

detailed (the children of claimants 1 and 2).

4. To provide a copy of the information regarding the protection of personal data

staff that the RFFM provided to the parents of the minors who

obtained a license from that Royal Federation in the Prebenjamines category

for the 2019/2020 season.

5.Regarding the list published by the RFFM website -which includes personal data

of the players belonging to each of the clubs registered in the competition

oficial- and in particular regarding the 2019/2020 season, it is requested:

-Detail what was the legal basis of that treatment: the publication of the lists

with the personal data of the players.

-Detail what was the purpose of that data processing.

-Detail what information was provided to the clubs that participated in the competition

official of the 2019/220 season regarding the purpose of the treatment materialized

in the publication on the RFFM website of the data of the players of each club, in

its various categories.

The RFFM responds on 03/11/2021 and provides a copy of the federative licenses of the children of the claimants and of the Federal Circular No. 5 -Season 2019/2020.

1.States that “The end date was the same for all categories competitions, regardless of the date on which they have held the last match."

It declares that “on May fourteenth, two thousand and twenty, in a meeting held by the Delegate Commission of the General Assembly of the Royal Football Federation of Madrid, it is agreed to terminate the competitions in the state in which they are were at the time of the declaration of the state of alarm by the Government, with the existing classification on that date and computing for these purposes all the matches played in each of them, with the consequences qualifications that this entails.” In this sense, the Federal Circular No. 5-Season 2019/2020, whose copy is provided, which includes the agreements adopted by the Delegate Commission of the General Assembly on 05/14/2020, establishes that, as consequence of the exceptional circumstances of force majeure that derive from the COVID-19 pandemic, it has been agreed: “1. Terminate in the state in that were at the time of the declaration of the state of alarm by the Government, with the existing classification on that date and computing for these purposes all the matches played in each of them, with the consequences qualifications that this entails.”

Let us remember that the state of alarm entered into force on 03/14/2020 as ordered by the

Royal Decree 463/2020, of March 14, declaring the state of alarm

for the management of the health crisis situation caused by Covid 19.

2. Regarding the procedures to register as an amateur player in a

license of the RFFM, informs that they are practiced by the player -or in the case of minors

age by their parents or guardians - before the club of their choice, being the club who

subsequently requests the registration of the licenses to the RFFM.

3. Confirms that the minor children of claimants 1 and 2 were given

registered during the 2019/2020 season in the RFFM with the Colegio football club

*** COLEGIO.1 in the Prebenjamín category.

4. Regarding the information regarding data protection that was provided, it states that

“It is contained in the license itself that the parents of minors sign with the

club of your choice at the time of formalizing the license, in this case, Colegio

***SCHOOL.1.”

The RFFM has provided a copy of the federative license of the two minor players

old. It is a form with the anagram and the identification data of the

RFFM and the legend Season 2019/2020. Each document carries a code

bars. The license is signed by the minor player and the authorization is recorded.

of one of their parents (personal data, name, surnames, NIF and signature). To the

footer of the document appears this legend:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

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In accordance with the provisions of the RGPD “and with respect to the data that

identify as federated, you are informed that they will be treated to carry out the

requested order. We will treat your image and/or your voice based on interest

of the Federation, according to article 36 of Law 15/1994, of 28

of December, of the Sport of the Community of Madrid.

Your data will be incorporated into the Data Protection System of Real

Madrid Football Federation, with NIF G78965043, and address at [...]. will be

kept for the duration of the consent, or where appropriate, the

legal time established for each of the legal obligations that derive

of the treatments for which you have consented. [....].”

5. Related to the publication on the RFFM website of a list with the data

personal details of the players of each of the clubs registered in the competition

answer the following:

5.1. That the legal basis that legitimizes the publication of the lists with the data

personal data of the players who are members of the federated club squads is the

fulfillment of a mission carried out in the public interest, article 8.2 LOPDGDD, which

It is based on the fact that Law 15/1994 "establishes as functions of the federations the

organization of official sports competitions, as well as the promotion, with

general character, of its sport modality or modalities throughout the territory of the

Community of Madrid, article 36, sections a) and b). Understanding that these functions

are tasks that correspond or have to be carried out by the federation by derivation of a

competence attributed by a norm with the force of law.” In particular, sections d),

e) and h) of article 36 of Law 15/1994, of December 28, on Sports of the

Community of Madrid attributes to it the functions of “d) Organizing and supervising the

official competitions in its territorial area.”; “e) Exercise disciplinary power in

the terms established in this Law and in its development provisions.”; Y

“h) Collaborate, where appropriate, in the organization or supervision of the official competitions of

state or international level.

5.2. Regarding the purpose of this treatment, it highlights that it was carried out and is carried out

“to fulfill the functions of organizing competitions of a

team sport and the promotion of said sport, making the participants visible

components of the respective templates and moving, as the main reason for a

sport from its lower categories to the professionals, that whoever wants

You can practice it with all the federative guarantees, that is, officially.”

5.3. It states that it is the player's Club that provides the RFFM with the details of the

player on the occasion of processing his license, "so this federation does not

It requires you to send him data that he does not have.” Regarding the rest of the clubs, he says: “being the

website of the RFFM, in this section, of free access, do not require that they be provided

data, but they can access the web and treat them according to the purpose for which they have been

been published.” (emphasis ours)

(iii) Request for evidence to the claimants:

The brief was notified electronically on 09/30/2021 and was accepted by its addressee

On the same date. It is requested that you send to the AEPD the documents that prove

what was the exact date each of the claimants received the call

telephone from the number ***PHONE.1.

The representative of the claimants responds on 10/13/2021 and provides various

documents from which it is inferred that the telephone calls made by the

claimed would have occurred on 06/17/2020. In short, it provides:

-Copy of the registration made on 06/18/2020 in the Incident Form of the

School to which the soccer club of the minors of the incident that occurred on the day belongs

06/17/2020. The facts that are detailed are the telephone calls made to the

parents of the two minors.

-Copy of the email sent to the DPO of the College by claimant 1 in which

reports that he received from the number ***TELÉFONO.1 two telephone calls on

06/17/2020 at 5:34 p.m., to which he could not respond, and another at 8:23 p.m. in which the

interlocutor identified himself as the coordinator of the claimed club, showed his interest

for his son to play in the club and informed him of his intention to do the same

offer to two other minors, his son's teammates, because he knew they were

friends with each other.

- Email sent on 06/19/2020 to claimant 1 from an address

email of the School informing him of the record of the incidence that had

statement stating the date on which the calls were made on the day

06/17/2020.

-Email certified by ***URL.1 sent to the RFFM on 06/19/2020 in the

that the events that occurred are communicated, you are informed that the College club does not

has provided information on the federated members or their families to the claimed club and

announces that the facts would be denounced before the State security forces

and before the AEPD given its seriousness.

In that same brief, the representative of the claimants, in addition to numerous

legal considerations on the burden of proof, requests, under article

77 of the LPACAP, that the following be practiced by the instructor of the file

trial proceedings:

“Contribution and exhibition by the claimed party regarding the accreditation of the

telephone calls made to the mobile numbers of my claimed.”

“Contribution upon request to VODAFONE and the telephone company of the

claimed for the identification of the calls in relation to the numbers of

mobile phones that are the object of this sanctioning file.”

It adds that "for evidentiary purposes, we designated the files, books, records,

public or private of how many entities and individuals have been mentioned in

throughout this writing, as well as any others that appear or are

emerge from them and from the accompanying documentation, especially the

owned by the party

claimed. “

Regarding the evidence proposed by the representative of the claimants, the

following details:

The first of them, that the complainants do not have the status of interested parties in the

administrative procedure nor, therefore, do they enjoy the rights that the

Article 53 of the LPACAP recognizes those interested in the procedure, among them,

section e), “make allegations, use the means of defense admitted by the

Legal System, and to provide documents at any stage of the procedure

prior to the hearing procedure [...]” In this sense, there would be no place to enter into assessing the

admissibility of the proposed evidence.

However, the proposed tests are totally unnecessary for the following reasons:

Reasons: On the one hand, there are elements in the file that confirm the date of

06/17/2019 as the one in which the calls were made and, on the other, because the

relevance of that date for instruction was connected with the application of the

article 26 of the RFFM General Regulations and, according to the information

facilitated by the RFFM, the 2019/2020 season ended many months earlier,

exactly on the date on which the state of alarm was declared by the Government, for

which as a result of the response of the RFFM is not relevant the exact day of the month of

June in which the calls would have been made.

SEVENTH: The proposed resolution is signed on 02/23/2022 in the following

terms:

<<That by the Director of the Spanish Agency for Data Protection the

FILE of the sanctioning procedure PS/00063/2021 opened to the CLUB

DEPORTIVO SAN ROQUE E.F.F., with NIF G80588098, for not being appreciated in the

conduct examined signs of infringement of article 6.1. of the RGPD.>>

EIGHTH: The proposed resolution was notified on 02/23/2022 and the notification was

accepted on 02/24/2021. Article 73.1 of the LPACAP establishes that "The formalities

that must be completed by the interested parties must be carried out within the period of

ten days from the day following the notification of the corresponding act, except in

in the event that a different term is set in the corresponding regulation.

After the indicated period has elapsed, there is no record in this Agency

that the respondent has made allegations to the resolution proposal.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: Claimants 1 and 2, mothers of seven-year-old children belonging to the

football club of the College ***COLEGIO.1 and affiliated to the Royal Football Federation of

Madrid (RFFM) in the Prebenjamines category, denounce that they received in their

mobile phones each calls from the coordinator of the claimed club, who is not

knew and with whom they had not had any relationship, in which he identifies them by

your name and communicates your interest in their children becoming part of the team

of the club, demonstrating during that conversation that he knows the name and surname of

their children, their way of playing, the soccer team they belong to and the name of their

friends.

SECOND: The claimed club admits that its coordinator made two calls

telephone calls to the mothers of the minors (claimants 1 and 2) from the number

***TELEPHONE.1 in order to offer them that their children play on their team in the

next season, for which the minors had to carry out a test at the club.

THIRD: On the origin of the personal data of the claimants -name and

mobile number- the respondent has explained that they communicated to a parent of his club,

D. D.D.D., whose son studies at the same school as the children of the claimants, the

interest in minors playing with them “and we asked if he could get in touch

contact their parents in case they are interested in them playing in our Club

for the next season.”

He has declared that “This father facilitated the contact of these mothers through a

friend of these mothers and who share a WhatsApp group, so we understand

that they have communicated our interest and are happy that we call them.”

“We understand by this fact his manifestation of free and informed will of the reason

of our request and our basis for requesting your phone as a means of

Contact".

FOURTH: The claimed club admits that it knew the names and surnames of the minors, children of the claimants, and states that this data “is publicly accessible to the wear their number and name on the shirts in the matches they play”; which can access to this information “through the RFFM federative file” and that “there is no we treat data of these players beyond public data or those known by holding matches”.

FIFTH: The claimed club admits that it knew how the minors played, children of the claimants and explains that they held a football match in Prebenjamines with his school team on 06/17/2020, which allowed him to know the form of play of all the players and "taking into account that each player takes his name on the shirt it is not difficult to identify the name of a player with his shape of play".

SIXTH: The minors, children of claimants 1 and 2, were affiliated with the RFFM during the 2019/2020 season, as evidenced by their respective federative records that are in the file sent by the Madrid Football Federation.

The license, which includes the names and surnames and the club to which they belonged during that season -Colegio ***COLEGIO.1-, is signed by the player under age and includes the authorization of one of their parents (personal data, name, surnames, NIF and signature). At the bottom of the document appears this legend: “[...] regarding the data that identifies you as a federated member, you are informed that will be treated to carry out the requested order. We will treat your image and/ or your voice based on the legitimate interest of the Federation, as provided by the Article 36 of Law 15/1994, of December 28, on Community Sport from Madrid.

Your data will be incorporated into the Data Protection System of Real

Madrid Football Federation, with CIF G78965043, and address at [...]. will be

kept for the duration of the consent, or where appropriate, the

legal time established for each of the legal obligations that derive

of the treatments for which you have consented. [...]"

SEVENTH: The RFFM has reported that in the 2019/2020 season the date of

completion of the competition was the same in all categories,

"regardless of the date on which the last match was held" and that

such date coincided with the date on which the Government declared the state of alarm.

It has provided the RFFM Circular "No. 5-Season 2019/2020" in which it is collected

the decision adopted by the Delegate Committee of the General Assembly on 05/14/2020,

as a consequence of the exceptional circumstances of force majeure that

derive from the COVID-19 pandemic:

<<1. Consider finished in the state in which they were at the time of the

declaration of the state of alarm by the Government, with the existing classification

to said date and calculating for these purposes all the matches played in each

one of them, with the classifying consequences that this entails.>>

EIGHTH: There is documentation in the file that proves that the claimants 1

and 2 exercised the right of access to their data and those of their minor children

by email addressed to the respondent, respectively, on the 23rd and 24th of

June 2020 and that the respondent responded on 07/03/2020.

The respondent reported in his response the identity of the data controller;

of the NIF; of the phone number; home; electronic address; purpose of

data processing; retention period; that it does not communicate data to third parties; No
makes international data transfers and does not use profiling techniques
data.

Regarding the data processed and its origin, it reported that, with respect to the claimants, the data
that he had was the name and telephone number and that "they were provided by a
person known to you, which we understood had your consent."

Regarding the data of the minor children, name and two surnames, it reported that "[...]
We do not have any personal data except those that are access
public through the RFFM federative record."

NINTH: The Record of Treatment Activities (RAT) of the respondent mentions
thirteen treatment activities, including those called "Management of
players" (RAT-01-001, "Management of minor players" (RAT-01-0002) and
"Prospecting Players" (RAT-01-012). Regarding this last activity
appears in it, in point 6, "Description of the treatment", as "Affected groups:
People interested in passing the tests to belong to the club".

TENTH: The RAT informs that the respondent has designated a Delegate of
Data Protection of the one who only provides this information: ***EMAIL.2.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of the RGPD grants to each authority of
control and according to what is established in articles 47 and 48.1 of the LOPDGDD, is competent

To initiate and resolve this procedure, the Director of the Spanish Agency for

Data Protection.

Article 63.2 of the LOPDGDD determines that "The procedures processed by the

Spanish Agency for Data Protection will be governed by the provisions of the

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

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

II

The principles relating to the processing of personal data are set out in article

5 of the RGPD, which provides:

"1. The personal data will be:

a) treated lawfully, loyally and transparently with the interested party (<<lawfulness, loyalty and

transparency>>)

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those purposes; according to article 89,

paragraph 1, the further processing of personal data for archiving purposes in

public interest, scientific and historical research purposes or statistical purposes are not

deemed incompatible with the original purposes ("purpose limitation");

(…)

2. The controller will be responsible for compliance with the provisions

in section 1 and able to demonstrate it (<<proactive responsibility>>)"

Article 6 of the RGPD, under the heading "Legality of the treatment", specifies in its

section 1 in what cases is the processing of data considered lawful:

"1. The treatment will only be lawful if it meets at least one of the following

conditions:

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

for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party

is part of 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 treatment is necessary to protect the vital interests of the interested party or another

Physical person.

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 person in charge of the treatment or by a third party, provided that on said

interests do not override 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 processing

carried out by public authorities in the exercise of their functions."

Article 6 of the RGPD provides in sections 2, 3, and 4:

2. Member States may maintain or introduce more specific provisions

in order to adapt the application of the rules of this Regulation with regard to the

treatment in compliance with section 1, letters c) and e), setting more

specifies specific treatment requirements and other measures that guarantee a

lawful and equitable treatment, including other specific situations of

treatment under Chapter IX.

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

established by:

a) Union law, or

b) the law of the Member States that applies to the data controller.

The purpose of the treatment must be determined in said legal basis or, in what

regarding the treatment referred to in section 1, letter e), will be necessary for the

fulfillment of a mission carried out in the public interest or in the exercise of powers

data conferred on the data controller. Said legal basis may contain

specific provisions to adapt the application of rules of this

Regulation, among others: the general conditions that govern the legality of the treatment

by the controller; the types of data object of treatment; the interested

affected; the entities to which personal data can be communicated and the purposes

of such communication; purpose limitation; the retention periods of the

data, as well as the operations and procedures of the treatment, including the

measures to ensure lawful and fair treatment, such as those relating to other

specific treatment situations under chapter IX. Union Law

or of the Member States will fulfill a public interest objective and will be proportional

to the legitimate end pursued.

4. When the treatment for another purpose other than that for which the data was collected

personal data is not based on the consent of the interested party or on the Law

of the Union or of the Member States which constitutes a necessary and

proportionate in a democratic society to safeguard the stated objectives

in article 23, paragraph 1, the data controller, in order to determine

if processing for another purpose is compatible with the purpose for which they were collected

initially the personal data, will take into account, among other things:

a) any relationship between the purposes for which the data was collected

data and the purposes of the intended further processing;

b) the context in which the personal data have been collected, in particular by what

regarding the relationship between the interested parties and the data controller;

c) the nature of the personal data, specifically when categories are processed

special personal data, in accordance with article 9, or personal data

relating to criminal convictions and offences, in accordance with article 10;

d) the possible consequences for data subjects of the envisaged further processing;

e) the existence of adequate safeguards, which may include encryption or

pseudonymization."

Article 4 of the RGPD, "Definitions", specifies in sections 1 and 2,

respectively, what is meant by "personal data" and "processing" for the purposes of

this Regulation:

"«personal data»: any information about an identified natural person or

identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person

whose identity can be determined, directly or indirectly, in particular by

an identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

physical, physiological, genetic, psychic, economic, cultural or social of said person;"

"«processing»: any operation or set of operations performed on data

personal information or sets of personal data, whether by procedures

automated or not, such as the collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use,

communication by transmission, broadcast or any other form of enabling of

access, collation or interconnection, limitation, suppression or destruction;"

III

1. The opening agreement of this sanctioning procedure attributed to the club

claimed an alleged infringement of article 6.1 of the RGPD by having processed data

of the claimants - their names and mobile phone numbers - and of their

seven-year-old children - their names and surnames, their way of playing, the team in which

played and the name of their friends - without having justified that both treatments

They respected the principle of legality.

The treatment on which the claim was based consisted, with respect to the data of the

claimants, in their collection and in the telephone calls that the claimed made the

06/17/2020 to each of the mothers in order to offer them that their children

will play for your club the following season and, as regards personal data

of minors, in their collection and in their use for the identification of

players. Also, regarding the data of both, in its conservation, as

manifested by the claimed club in its response to the access exercised by the

claimants.

It should be remembered that the respondent, in his response to the request for information from the

Subdirectorate of Inspection of the AEPD, prior to the admission of the claim and the

beginning of the sanctioning file, did not justify what was the basis of the legality of the

treatment carried out. He stated then that the treatment of the data of the

minors was based on the fact that they had been obtained from a publicly available source and,

on the treatment of the data of the claimants, mothers of the minors, said that

understood that the fact that the father of another player on his team had

provided their mobile phone numbers and names was a consequence of the

willingness of both to consent to their treatment.

Given these statements by the respondent, in the agreement to open the proceeding

It was highlighted that public access sources, to which the articles referred

6.2 and 3.j of Organic Law 15/1999 on the Protection of Personal Data

(LOPD), do not exist in the current data protection regulations in the sense that

they had in the LOPD and that the RGPD requires that the consent be express (article

4.11), unlike what the LOPD provided, which admitted tacit consent, for

which did not prove the alleged consent of the claimants for the

treatment of your data.

In accordance with article 5.2. of the RGPD -principle of proactive responsibility- it is up to the

responsible for the treatment to be in a position to prove that the treatment is

based on any of the legal causes provided for in article 6.1 of the RGPD.

Taking into consideration that provision, which affects the burden of proof of the

compliance with the principles governing the processing of personal data

personal, for what matters here, of the principle of legality, and the circumstance that in

In this particular case, it was necessary to exercise extreme control over the legality of the treatment,

because it concerned data of minors, in order to clarify the facts and purge

liability that the claimed party may have incurred was agreed upon

opening of sanctioning procedure PS/00063/2021.

2. Respondent made no objections to the opening agreement, most likely

because you did not access the electronic notification. However, in the testing phase -whose

proceedings were notified in addition to electronically by mail - the claimed

has answered the questions asked and has justified the legality of the treatment in

a legal basis other than the one you invoked in your brief responding to the request

of prior information.

The respondent affirms in his answer to the tests carried out, a letter dated

11/15/21, that the treatment is based on the prevalence of the legitimate interest that

holds, in accordance with article 6.1.f) of the RGPD. It expressly states that “The legal basis

for the processing of information is the legitimate interest of the data controller.

treatment." and that “The purpose is the communication of the interest of the person in charge in

provide proof of access to the club”.

On the reason for the legality of the treatment that he now invokes, the respondent does

various considerations dealing with the following issues: (i) the origin of

data of minors; (ii) the reasonable expectations that existed that the data

of the minors were treated with the purpose of offering them the possibility of playing in

your team next season; (iii) weighing of the interests of the controller

of the treatment and the interests of those affected; (iv) the impact that the treatment

could have had on the rights of the interested parties; (v) the need for

treatment; (vi) and the safeguards for the protection of the rights of the

interested. The statement made by the respondent is transcribed below:

(i) “Considering the weighting of the processing of the data of minors,

We communicate that they are public access through the Royal Football Federation of

Madrid. [....]. It is also publicly accessible by wearing your bib number and name on the

t-shirts of the matches they play.”

(ii) “It is culturally and socially assumed by custom that the teams offer their

clubs to players they consider to have options for progress. The community in

generally recognizes and genuinely expects that data controllers can

act and process the data in pursuit of said interest.”

(iii) “Analyzing the interest of the Responsible and the interest of the players in an analysis

in the least intrusive and most transparent way and with the utmost respect when dealing with

of minors and in our obligation of legal compliance, it is requested through

A parent from our club informs their parents of our interest in

evaluate and test their children so that they can play in

our club. We understand that the treatment is necessary for the legitimate interest of the

Responsible and the interest shown by minors.

“In attention to the protection of the interested parties, we have taken into account the interest

of those affected and not only their fundamental rights and freedoms.” "The terms

<<interests>> and <<rights>> we understand that they must be interpreted in the

broad We understand that it is necessary to also take into account the <<interest>> of

those affected, not only their fundamental rights and freedoms, which

we respect them at all times and we let their mothers know that.”

“These minors express their interest to their friends and players from our club.

to play in our club and one of his reasons is that his club has this activity

as extracurricular and due to the Covid situation, his school would suspend activities

extracurricular.”

(iv) “Likewise, we understand that the impact on the rights of the interested parties is

null or very low since on 07/07/2020 we attended to your right of access

exercised before our entity and in it we inform you of our intention to attend to your

rights and especially that he could exercise the right of opposition as stipulated

in article 14."

(v) "We did not find in our valuation any alternative method that allows us to

communicate our interest and purpose to the interested parties and that likewise allows us to

comply with our legal obligations to achieve the objectives pursued and

with the least impact for stakeholders. The express authorization of the interested parties

for the processing of your information and the establishment of contact is not

we find viable until contact has been established."

(vi) Regarding the "guarantees offered to the interested parties, we understand that they are sufficient and

adequate to reduce the impact of the data subjects and the non-use of

improper. We offer the attention of your rights and our disposition before any

pressure from third parties because of their position with them."

"In compliance with our obligations under the RGPD and LOPDGDD

we have established an informative clause that must be signed by all the players or

in the case of minors, their parents or legal guardians when tests or

They become part of our team."

With regard to the treatment of the data of the claimants, mothers of the

minors, the respondent does not clearly state what, in his opinion, is the legal basis for

that treatment. Although it begins by stating that, in general, "The legal basis

for the processing of information is the legitimate interest of the data controller.

treatment.", further on appears to imply that the legal basis for that

treatment is consent. Thus, it says: "Providing us with data through

intermediary with the clear purpose that we communicate to their mothers, in this case

We understand that they gave their consent so that we could communicate with them,

establishing an "action" or a clear affirmative act that reflects a manifestation of

free, specific, informed and unequivocal will of the interested party to accept the

treatment of personal data that concerns you." (The underline is

our)

In turn, it seems to contradict the above in another paragraph when it refers to the right of

opposition of the interested parties, which presupposes that the legal basis of the

treatment of the personal data of the complainants was also the prevalence of

your legitimate interest in accordance with article 6.1.f) of the RGPD. The defendant says in that

meaning, when referring to obtaining data from mothers through

intermediary: "Our communication and the purpose for which we request your data

we consider that they allow the decision of the interested party to oppose or not the delivery

of your data."

Well, beyond what was stated by the respondent regarding the treatment of

data of the claimants -statements that suffer from a lack of clarity- are

advances that the same legal basis that legitimizes the processing of personal data

minors in order to offer them to play in the club the following

season operates in this case as a legal basis for data processing

personal data of the claimants, in particular, their name and mobile number, unique

data on which the treatment they denounce was about.

In the case in which we are dealing with the players whom the defendant wants to make a

offer to play with him next season are minors, they have

seven years, so any contact that the respondent wanted to establish with the

stated purpose should address their legal representatives, in this case the

parents who hold parental authority (article 162 of the Civil Code).

Thus, to the extent that we can affirm that the treatment that the respondent

made of the data of underage players was lawful, since it was founded

in the prevalence of your legitimate interest in making them an offer to play for your club

against the interests, fundamental rights and freedoms of these minors, must

conclude that the satisfaction of their interest makes it equally necessary to treat

the data of the legal representatives (in this particular case, of the mothers) of the

underage players. The consequence is, therefore, that the legal basis of the

treatment of the data of minors is, in this case, also and

necessarily, the basis of legality of the treatment of the data of the mothers,

the claimants, due to their status as legal representatives of their children.

3. As stated in the preceding paragraphs, the respondent invokes as

basis of legality of the treatment carried out the prevalence of the legitimate interest that

holds against the interests, fundamental rights and freedoms of the interested parties,

minors and their mothers, in application of article 6.1.f) of the RGPD, a precept that

provides that the treatment “necessary for the satisfaction of interests

legitimate pursued by the data controller or by a third party, provided that

over said interests do not prevail the interests or the rights and freedoms

fundamental data of the interested party that require the protection of personal data, in

particularly when the interested party is a child.

In relation to this cause of legality, the judgment of the Court must be brought up of Justice of the European Union (STJUE) of 11/24/2011 (joined cases C-468/10 and C-469/10) that recognized the direct effect of article 7.f) of the Directive 95/46 repealed by the RGPD. The reason is that, being that provision of the Directive, essentially identical to article 6.1.f) of the RGPD, its considerations are fully applicable to the matter at hand.

The STJUE indicated (section 38) that article 7.f) established two requirements cumulative for a processing of personal data to be lawful: on the one hand, that the treatment was necessary for the satisfaction of a legitimate interest pursued by the data controller or by the third party or third parties to whom communicate the data, and, on the other, that the rights and fundamental freedoms of the interested party.

On the weighting that must be done between the legitimate interest of the person in charge and the fundamental rights, freedoms or interests of the owner of the data, the STJUE indicates that it will depend, in principle, on the specific circumstances of the particular case in question, in which framework the person or institution that carries out the weighting must take into account the importance of the rights conferred on the interested party by the articles 7 and 8 of the Charter of Fundamental Rights of the European Union (heading 40).

Regarding the cause of legality of the treatment provided for in article 6.1.f) of the RGPD, illustrative is recital 47 of the RGPD and Opinion 6/2014 prepared by the Working Group of Article 29 (hereinafter, GT29) related to the “Concept of Legitimate interest of the data controller under article 7 of Directive 95/46/CE”, dated 04/09/2014, which offers some criteria for its app.

Recital 47 of the RGPD says:

“The legitimate interest of a data controller, including that of a

responsible to which personal data may be communicated, or of a third party,

may constitute a legal basis for processing, provided that it is not

prevail the interests or the rights and freedoms of the interested party, taking into account

account the reasonable expectations of data subjects based on their relationship

with the person in charge. Such legitimate interest could be given, for example, when there is

a relevant and appropriate relationship between the data subject and the controller, such as

in situations in which the interested party is a client or is at the service of the

responsible. In any case, the existence of a legitimate interest would require

thorough evaluation, even if a stakeholder can accurately foresee

reasonable, at the time and in the context of the collection of personal data,

that processing may occur for that purpose. In particular, the interests and

fundamental rights of the interested party may prevail over the interests

of the person in charge of the treatment when proceeding to the treatment of the data

in circumstances in which the data subject does not reasonably expect

further treatment is carried out. Since it is up to the legislator

establish by law the legal basis for the processing of personal data by

part of the public authorities, this legal basis should not apply to the

treatment carried out by public authorities in the exercise of their

functions. The treatment of personal data strictly necessary

for the prevention of fraud also constitutes a legitimate interest of the
responsible for the treatment in question. The processing of personal data
for direct marketing purposes may be considered made in the interest
legitimate." (emphasis ours)

In turn, according to the Opinion of WG29 6/2014, in order to be able to conclude that a certain
treatment is lawful on the basis of the prevalence of the legitimate interest of the
responsible party or third parties against the interests, fundamental rights or
freedoms of data subjects, the analysis must begin by examining whether the
legitimate interest invoked (i) is lawful, that is, if it is in accordance with national legislation and
of the European Union (E.U.) that is applicable; (ii) sufficiently specific, this
is, if it is articulated clearly enough to allow the proof of
weighing is carried out against the interests and rights
interests of the interested party and (iii) represents a real and current interest, not
speculative.

Regarding this first element to be examined, (i) the legality of the legitimate interest invoked, this
is, if the processing of data that the person in charge considers necessary to satisfy
your interest respects national and EU legislation, WG29 Opinion 6/2014
says that an interest can be considered legitimate “provided that the person responsible for the
treatment may pursue this interest in accordance with the laws relating to the
data protection and with the rest of the legislation”. According to the opinion of the GT29 only
If this first condition is met, it will be appropriate to carry out the
weighing or weighting between the interest invoked by the controller and the impact
that the treatment supposes on the interests and the fundamental rights and
freedoms of the interested parties.

On the other hand, the weighting or weighing judgment between the legitimate interest of the
responsible for the treatment of one side and that of the interests, fundamental rights

and freedoms of the holders of the data of another, must respect the principle of

proportionality. The Constitutional Court -SSTC 66/1995, of May 8, FJ 5;

55/1996, of March 28, FFJJ 6, 7, 8 and 9; 207/1996, of December 16, FJ 4 e), and

37/1998, of February 17, FJ 8- has considered that to check if a measure

restrictive of a fundamental right exceeds the judgment of proportionality, it will be necessary

verify that it meets these three requirements or conditions: if that measure is susceptible

to achieve the proposed objective (judgment of suitability); if, in addition, it is necessary, in

the sense that there is no other more moderate measure to achieve such

purpose with equal efficacy (judgment of necessity); and, finally, if it is

weighted or balanced, because more benefits or advantages are derived from it for the

general interest that harms other goods or values in conflict (judgment of

proportionality in the strict sense).

4. We examine whether, in light of the criteria set forth, in the case presented here and

attending the circumstances that concur in it, the treatment that the club claimed

made of the data of minors and their mothers could be covered by the reason

of legality described in article 6.1.f) of the RGPD.

As a starting point, the legality of the interest of the person responsible for the

treatment: if the person in charge of the treatment, the club, could attend to your interest without

violate the data protection regulations and the rest of the legislation.

In line with the requirement that the interest that the defendant seeks to satisfy be lawful

It must be remembered that the claimants alleged that the respondent violated article 26

of the R.G. of the RFFM and affirmed that this provision “considers prohibited the contact for recruitment with players from other clubs while they are federated, if there is no express authorization from them.”

However, article 26 of Book IV of the RG of the RFFM establishes:

“No Club, either directly through a person united in some way way to the same, or through an intermediary, may exercise actions of recruitment of amateur players without the knowledge and express authorization of the club with which they are registered, as long as the competition has not finished of the last season of your license. The same prohibition extends to any person whose affiliation is recorded in the federative organization affects the RFFM or the RFEF.” (emphasis ours)

The provision refers to the recruitment of "amateur players". For the R.G. of the RFFM (Book IV, article 1.1.) “Soccer players can be Professionals and non-Professionals or fans.” And article 1.4. indicates that “Amateur soccer players are those or those who are dedicated to the practice of football for mere sporting desire within the discipline of a club, not receiving any remuneration from it, without prejudice to its right to be compensated for the expenses that could be caused by travel, stays, concentrations, maintenance, loss of working hours in your occupation or other activities, both for holding training sessions or matches official or friendly.

According to the transcribed definition and given that the minors, children of the claimants, they were affiliated to the RFFM in the Prebenjamines category during the season 2019/2020 (we refer to the federative licenses of both that are described in the Proven Facts of this resolution) it is evident that both had the condition of amateur players.

Article 26 of Book IV of the R.G. of the RFFM prohibits a club from capturing players

fans "as long as the competition of the last season of their

license." However, once the competition of the last season of the

license, according to this precept there will be no prohibition for the collection of

players.

The RFFM has reported that the competition for the 2019/2020 season ended in

moment of the declaration of the state of alarm by the Government, which

occurred on 03/14/2020, date of publication and entry into force of the Royal Decree

463/2020, of March 14, declaring the state of alarm for the management

of the health crisis situation caused by Covid 19.

To the question that was made to the RFFM about whether all the clubs and categories

finished the competition of the 2019/2020 season on the same date and, in case of

If not, on what dates did the claimed club and the club from the Colegio de los

minors, states that “The end date was the same for all categories

competitions, regardless of the date on which they have held the

last match."

The RFFM has provided a copy of the "Federative Circular No. 5-Season 2019/2020"

in which the agreements adopted by the Delegate Commission of the Assembly are recorded

General on 05/14/2020, in which it is established that, as a consequence of the

exceptional circumstances of force majeure arising from the coronavirus pandemic

COVID-19, it has been agreed: “1. Terminate in the state in which

were at the time of the declaration of the state of alarm by the

Government, with the existing classification on that date and computing for these purposes

all the matches played in each of them, with the consequences

qualifications that this entails. [...]"

Therefore, when the coordinator of the claimed club processed the data of the minors and

of their mothers through the phone calls he made to the claimants -the

06/17/2020- more than three months had passed since the competition of the

season 2019/2020 had ended, otherwise the only season contemplated

in the federative licenses of minors.

Consequently, contrary to what the representative of the complainants defends, the

claimed did not breach article 26 of Book IV of the R.G. of the RFFM. and to the extent

that the club complied with the federative regulations that regulate the practice of this sport and,

in particular, those that affect the interest that it seeks to satisfy, from that perspective,

their interest must be deemed lawful.

Continuing with the examination of the legality of the interest held by the claimed party, you can

affirm, in view of the information and documentation in the file,

that, aside from the question as to whether the data processing carried out

violated the principle of legality - an issue on which this file deals

sanctioning- the treatments that the defendant made with the purpose of satisfying his

interest complied with the principles of data minimization (article 5.1.c, RGPD) and of

limitation of the purpose (article 5.1.b, RGPD) and in addition the claimed had

adequate technical and organizational measures have been implemented in order to be in

to comply with the obligations imposed by the RGPD. The documentation provided

shows that he had a Record of Processing Activities (RAT) from the

06/14/2019, before the events caused by this

sanctioning file, which was updated on 11/23/2019 and has

appointed a DPO.

The treatment that the respondent made, both of data of minors and of

the claimants, complied with the principle of minimization since it dealt with those

data that were strictly necessary to be able to attend to the interest pursued.

In that sense, and with regard to the claimants, it dealt exclusively

the data that were essential to contact them: mobile number and

Name. Regarding the data of minors, the conclusion is identical. The data

treated were the name and surnames, essential to identify the players to

to whom your offer was addressed; the club in which they had played, their way of playing and the

name of your friends. This last information is also considered necessary in the

context of the purpose of the treatment: the recruitment of the players through a

offer for the minors to play for his club the following season that the

claimed makes reach their mothers in a telephone conversation. Serving

those circumstances, the reference to the characteristics of the game is also necessary,

because it seems logical that the offer of the claimed club is a consequence of the

sporting qualities that he appreciated in the players. As for the names of their

friends, the fact that the players are seven years old and that it is

relevant, because it influences the well-being that they could find in the club

claimed and in the tranquility of their parents, knowing that their

friends. We refer to the document provided by the representative of the claimants

in test phase called "Test number 3" which includes email

that College staff addressed to one of the claimants, confirming that the

incidence that had been communicated had been registered and in which the

incident form she filled out, describing the conversation

maintained with the coordinator of the claimed club and says among other things: "I

I comment that right now the main reason for playing football for XXXXX is to be

with his friends and tells me that they had spoken with C.C.C. (the mother of XXXXX) and that

they were going to call XXXXX's parents since they knew that the three of them were friends and that the

The idea was for the three of them to go together."

It should also be added, regarding the processing of data relating to the form of play

that it cannot be ignored that whoever decides to participate as a federated player in a

sports competition accepts that, within the framework of the competition, between the teams

participants and in that sports community that de facto is created between them, whether

certain aspects of your privacy are known, such as that relating to the characteristics

of your game.

The treatment of data that the claimed person carried out to satisfy his interest - a

offer to the mothers of the two underage players for their children to play

at his club the following season - also respected the limitation principle of

purpose described in article 5.1.b, RGPD:

"The personal data will be: (...)

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those purposes; according to

article 89, paragraph 1, further processing of personal data for purposes

archive in the public interest, scientific and historical research purposes or

statistics will not be considered incompatible with the initial purposes ("limitation of

purpose")"

The respondent stated in his response to the evidence and in the informative brief prior to

the admission to processing of the claim, and even in its response to the requested access

by the claimants, who obtained the data of the minors from a source of access

public, through the information provided by the website of the federation and the

that appears on the back of the players' jersey.

Given this statement, it is necessary to underline again that the fact that the data

of minors are accessible through the RFFM website or by

other ways during the development of the competition, for example, for the information that

appears on your sportswear, does not in any way constitute a legal basis for the

legality of the treatment that could subsequently be made of the data obtained through

through those means. It is not with the current regulations, the RGPD, and neither was it

during the validity of the LOPD as a result of the STJUE of 11/24/2011 that forced to make

an interpretation of its article 6.2 in accordance with Directive 95/46/EC.

In the current regulations, "all" processing of personal data necessarily has

be based on one of the six grounds of legality listed in article

6.1 of the RGPD, among which do not appear, as can be verified by reading it, the

called public access sources. For this reason, in the opening agreement of this

procedure it was noted that the so-called public access sources, which were made

reference to the repealed LOPD and its Development Regulations, approved by the Royal

Decree 1720/2007, they do not exist with the same character in the framework of the current regime

legal data protection and that the position of the AEPD on the matter was

clear: The Report of 10/03/2019, (Entry Record 045824/2019) said that “as of

of the entry into force of the RGPD, it is not possible to speak of a legal concept of “sources

accessible to the public" such as the one that existed in the previous Organic Law 15/1993 (...) The GDPR only talks about public access sources when regulating the right to information if the data has not been collected from the interested party".

The RFFM has a web page in which the data of those who participate in the competitions. Exceeds the object of this procedure the analysis of the aforementioned website. However, we can affirm that the RFFM fulfills a mission of public interest in the promotion of this sport in the field of Community of Madrid and that Law 15/1994 of Sport of the Community of Madrid confers, among other functions, (article 36 d) "Organize and supervise competitions officials of its territorial scope. The treatment that the RFFM makes of the data personal information of its affiliates - to the extent that the processing in question is purpose of fulfilling the functions entrusted to it by Law 15/1994 of the CAM- has its legal basis in section e) of article 6.1 of the RGPD that refers to the "necessary treatment for the fulfillment of a mission carried out in the interest public or in the exercise of public powers conferred on the person responsible for the treatment".

The RFFM has declared that the legal basis that legitimizes the publication on its page website of the lists with the personal data of the players who are members of the templates of the federated clubs is the fulfillment of a mission carried out in public interest, article 8.2 LOPDGDD, which is based on the fact that Law 15/1994 of the CAM "provides as functions of the federations the organization of competitions official sports, as well as the promotion, in general, of its modality or sports modalities throughout the territory of the Community of Madrid, article 36, sections a) and b). Understanding that these functions are tasks that correspond or It is up to the federation to perform by derivation of a competition attributed by a norm with the force of law."

Regarding the purpose of this treatment, the RFFM highlights that it was carried out and

performs “to comply with the functions of organizing competitions of

a team sport and the promotion of said sport, making visible the

participating components of the respective templates and transferring, as a reason

of a sport from its lower categories to the professionals, which

who wants to can practice it with all the federative guarantees, that is,

officially." And he adds referring to the clubs that "being the website of the RFFM, in

this section, of free access, do not require data to be provided, but rather

can access the web and treat them according to the purpose for which they have been

published.” (emphasis ours)

The respondent respected the principle of limitation of the purpose in the subsequent treatment

that he made of the data of the minors (their names and surnames), which he obtained from the

cited website.

As has been argued, the interest that the respondent sought to satisfy through the

treatment carried out was lawful (i). We can also affirm that it was (ii)

“sufficiently specific”, since it could be specified in the recruitment of players, which

that implies being able to communicate to the player the offer to play in his previous club

carrying out a test, and being the players in this particular case minors of

age the offer should be communicated to their legal representatives. The interest pursued

by the claimed party, thus defined, allows the weighing test to be carried out

Contrasting it with the interests and fundamental rights of the interested parties.

And, finally, it seems evident that the interest pursued by the respondent was (iii) "real"

and not speculative.

At the same time, the treatment carried out by the claimed club complies with the three

requirements that according to the doctrine of the T.C. guarantee that the restriction of a right

It is fundamental that it complies with the principle of proportionality: judgment of suitability; judgment of

necessity and judgment of proportionality in the strict sense.

The treatment of the personal data of the claimants and their children was ideal

for the purpose pursued as evidenced by the fact that the respondent managed to contact

with the mothers of the players and communicate their offer for the following season.

Likewise, the processing of data that the respondent carried out to satisfy the interest

that he held was "necessary", since there were no other less invasive routes than

allow the club to contact the mothers of minors and send them their

offer. In this regard, these statements by the respondent are illuminating:

“We did not find in our assessment any alternative method that allows us to

communicate our interest and purpose to the interested parties and that likewise allows us to

comply with our legal obligations to achieve the objectives pursued and

with the least impact for stakeholders. The express authorization of the interested parties

for the processing of your information and the establishment of contact is not

we find viable until contact has been established.”

The requirement of the “necessity” of the treatment, which is mentioned at the beginning of the wording

of article 6.1.f) of the RGPD, is an integral element of the cause of legality described

in that precept. You can cite the Judgment of the Court of Justice of the Union

Court (STJUE) of 05/04/2017, case C-13/16 (ECLI: EU:C:2017:336) that resolves

the preliminary ruling raised by the referring court on the concept of

"need" contained in article 7.f) of Directive 95/46/EEC, a very similar precept

to the current article 6.1.f) of the RGPD:

The CJEU says that "[…] the system of Directive 95/46 and the wording of its article

7 it follows that letter f) of this same article does not establish, in itself, the obligation

that the data processing is carried out (for example, the communication to a third party

of data necessary for the satisfaction of a legitimate interest pursued by it),

but it confers the power to carry out that treatment." (paragraph 26)

It adds that "[...] Article 7, letter f), of Directive 95/46 sets three requirements

cumulative for the processing of personal data to be lawful: first, that the

responsible for the treatment or the third party or third parties to whom the data is communicated

pursue a legitimate interest; second, that the treatment is necessary for the

satisfaction of that legitimate interest and, third, that the rights and

fundamental freedoms of the interested party in the protection of data. (paragraph 28)

And that "[...] Regarding the requirement that data processing is necessary,

It should be recalled that the exceptions and restrictions to the principle of protection of

personal data must be established without exceeding the limits of what

strictly necessary (judgments of November 9, 2010, Volker and Markus

Schecke and Eifert, C 92/09 and C 93/09, EU:C:2010:662, paragraph 86; from November 7

of 2013, IPI, C 473/12, EU:C:2013:715, section 39, and of December 11, 2014,

Ryneš, C 212/13, EU:C:2014:2428, paragraph 28). It should be noted in this regard

that, as indicated by the referring court, the exclusive communication of the name

and the surname of the person causing the damage does not allow him to be identified with sufficient precision

as to be able to sue him. Thus, for this purpose it is necessary to obtain

also your address and identification number or at least one of these two data."

(emphasis ours)

Thus, we must conclude that the interest of the respondent in processing the data of the minors and the claimants in order to contact them to communicate an offer for their minor children to play in the club was an interest lawful.

Focused on the judgment of proportionality in the strict sense or, according to the expression used in the Opinion of the WG29, "balancing test", it is necessary to analyze the impact that the treatment has had on the fundamental rights and freedoms of interested parties and assess whether the treatment in question has been balanced, as it derives of it more benefits or advantages for the general interest than damages for other goods or values, in this case for the data protection right of the claimants and of their minor children; rights that have suffered as a result of the treatment a restriction.

In this regard, it can be seen that the impact that the treatment has had on the interests, fundamental rights and freedoms of minors and their mothers has been minimal and no adverse consequences have been derived for them. In addition, you must assess that there was a reasonable expectation that this treatment could occur. Those who decide to join the RFFM and participate as members in the competitions that she organizes are aware that their personal data will be subject to certain treatments both by the RFFM, in compliance with the

functions entrusted to him by Law 15/1994 of the CAM, as well as by the club with which are linked and cannot ignore that article 26 of the R.G. of the RFFM admits that clubs can recruit players when certain conditions, so that it is possible that your data will be processed for that purpose. Y, in this case, being the interested parties minors whose parents authorized expressly that their children request the federative license, we must understand that parents also had a reasonable expectation that a treatment with the purpose pursued by the claimant came to pass.

In this line of argument it is added that the document of the federative license of the minors, in which the authorizations of their respective parents are recorded, includes the foot of the document an informative legend that, among other things, says the following: "[...] regarding the data that identifies you as a federated member, you are informed that will be treated to carry out the requested order. We will treat your image and/or your voice based on the legitimate interest of the Federation, as provided by the Article 36 of Law 15/1994, of December 28, on Community Sport from Madrid. [...]".

On the other hand, article 1.3 of Book I of the R.G. of the RFFM -which is still citing the LOPD- establishes that:

"For the purposes provided for in article 6 of Organic Law 15/1999, of 13 December Protection of Personal Data, all persons [...] to those who, due to their sports activity, are issued a federative license by this, they give their consent for their personal data to be incorporated into the file whose owner is the Real Madrid Football Federation which is registered in the General Registry of Data Protection.

Likewise, they authorize their data to be made public in those assumptions in which it is necessary for the fulfillment of the functions of the

Royal Football Federation of Madrid. Being informed that they can exercise

your right of access, rectification and cancellation."

The practical absence of a negative impact on the interested parties derived from the

treatment of your data by the claimed party, an impact that we estimate remains

reduced to the restriction suffered by their fundamental right to data protection, there is

to put it in relation to the benefit derived for society from the

treatments that have the same purpose as that carried out by the claimed party in the

framework of a sports activity whose promotion and organization is entrusted

the RFFM by Law 15/1994 of the CAM, thereby fulfilling purposes of general interest.

In this weighting, due to their decisive nature, elements such as

the reasonable expectation that processing for this purpose would take place

have those who decide to join the RFFM or the measures that the claimed club had

implemented to strictly comply with the obligations imposed by the RGPD. fits

add in relation to minors, whose fundamental right to protection

of data has been limited, that those who have demonstrated the desire - in this case, with

the consent of their parents - to play soccer as federated athletes and participate

in a sports competition they will be pleased that their sports qualities are seen

positively valued by other teams.

Finally, an important precision must be made about the scope of the treatment

of data made by the claimed party whose legality is based on article 6.1.f) of the

GDPR. The respondent has made these statements in the course of the procedure:

“In compliance with our obligations under the RGPD and LOPDGDD

we have established an informative clause that must be signed by all the players or

in the case of minors, their parents or legal guardians when tests or

They become part of our team.”

“The express authorization of the interested parties for the processing of their information and

establishment of contact we do not find viable until it has been

contact established."

In the copy of the RAT of the club that you have provided us, it is included among the activities of

treatment carried out by the so-called "Prospecting of players". Regard

to this activity is stated in point 6, “Description of the treatment”, “Persons

interested in passing the tests to belong to the club” and in point 4, “Legitimacy of the

treatment” is indicated: “Basis of legality. The treatment is based on the consent of the

affected."

Thus, it must be concluded that the data processing for which the claimed

has invoked as legal basis of legality the prevalence of its legitimate interest, article

6.1.f) RGPD, it will be only that which is necessary to contact the

players, in this case, being minors, with their legal representatives, in particular

their mothers, to make an offer for the following season, but that, the

data processing carried out as a result of the recipients of the offer accepting

submit to a test at the club will require that you previously collect the

consent of the interested parties, in such a way that the legal basis of the treatment

carried out for this purpose - the performance of the tests prior to the

consolidation of the offer- it will no longer be article 6.1.f) of the RGPD but article 6.1.a)

GDPR.

Finally, it is reported that the interested parties may object to their data being

data are subject to treatment based on the provisions of article 6.1.f)

RGPD, in the terms established in article 21.1 of the RGPD. Also, they can

request the deletion of your personal data when any of the

circumstances collected in 17 of the RGPD among which the precept mentions the

following: “a) the personal data is no longer necessary in relation to the purposes

for those that were collected or otherwise treated;” and “c) the interested party opposes

to processing pursuant to Article 21(1) and no other grounds prevail

legitimate for the treatment, or the interested party opposes the treatment in accordance with the

article 21, paragraph 2;”.

In view of the foregoing, it is obligatory to conclude that the treatment that the club

claimed made of the personal data of claimants 1 and 2 and those of their children

minors in order to contact them to offer them that their children

play for his club the following season, after undergoing a test, he respected the

principle of legality, the legal basis of the treatment being the circumstance described in the

letter f) of article 6.1. of the GDPR. Thus, not existing in the data processing

indications of infraction of the principle of legality have been made, the file of the

penalty procedure.

Therefore, according to the facts that have been proven and the legislation

applicable,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: AGREE TO FILE the sanctioning procedure PS/00063/2021

open to CLUB DEPORTIVO SAN ROQUE E.F.F., with CIF G80588098, at no.

evidence of infringement of article 6.1. of the GDPR.

SECOND: NOTIFY this resolution to C.D SAN ROQUE E.F.F., with NIF

G80588098.

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

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 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 Spanish Agency for Data Protection within a month from

counting from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency