

☐ Procedure No.: PS/00209/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) dated February 7, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against CLUB GIMNASIA RÍTMICA SAN ANTONIO with NIF

G57922429 (hereinafter, the claimed one).

The claimant, mother of two girls, ages 10 and 12, who do gymnastics

rhythmic in the club against which the claim is directed states that on February 5

of 2021 requested the club to remove from their social networks all the photos and videos in

those who appeared their daughters. He adds that he has no record of having given his

authorization, which only gave it to the Federation, and in relation to the competitions in

girls to participate. And that, in any case, from that moment he denied

expressly their authorization to take pictures of the girls and to publish them in

Internet.

Likewise, it indicates that in the early hours of February 6, the club published

a new video in which her daughters appear, having asked Instagram for the

removal of your images.

And, among other things, it provides the following documentation:

☐ Complaint dated February 7, 2021, before the offices of the Guard

Civil of Post P. Sant Antoni de Portmany (Illes Balears).

Photo of the complaint before the social network Instagram.

☐

□ Annex 1 of the 2021 federal license, where the authorizations are recorded

given by the claimant.

SECOND: In accordance with the provisions of article 65.4 of the LOPGDD, which has provided for a mechanism prior to the admission to processing of the claims that are formulated before the AEPD, consisting of transferring them to the Protection Delegates of Data designated by those responsible or in charge of processing, for the purposes provided for in article 37 of the aforementioned rule, or to these when there are none designated, the claim was transferred to the claimed entity within the framework of the file E/01193/2021, to proceed with its analysis and respond to the complaining party and this Agency within a period of one month.

THIRD: On February 9 and 22, 2021, the respondent was requested through the service of electronic notifications and postal mail, which will contribute to this Agency the next information:

1. The decision made regarding this claim.
2. In the event of exercising the rights regulated in articles 15 to

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3.

Four.

22 of the RGPD, accreditation of the response provided to the claimant.

Report on the causes that have motivated the incidence that has originated the claim.

Report on the measures adopted to prevent the occurrence of

similar incidents, dates of implementation and controls carried out to

check its effectiveness.

5. Any other that you consider relevant.

It is known that the first of them was returned on February 20, 2021 for having

the delivery term expired and the second was delivered to the person claimed by the service

postal mail on March 3, 2021.

After the term granted to the defendant without having responded to the

request for information, in accordance with the provisions of article 65.2 of the

LOPDGDD, the agreement for admission to processing is signed on May 4, 2021

of this claim.

FOURTH: On June 18, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate sanctioning proceedings against the CLUB

SAN ANTONIO RHYTHMIC GYMNASTICS with NIF G57922429 under the powers

established in art. 58.2 of the RGPD and in articles 47, 64.2 and 68.1 of the Organic Law

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

Digital Rights (LOPDGDD), for the infringement of article 6 of the RGPD, typified in

article 83.5 b) of the RGPD and considered very serious in 72.1.a), for the purposes of

prescription, setting an initial penalty of 5,000 euros (five thousand euros).

FIFTH: The Agreement to Start the Sanctioning Procedure was notified to the defendant

electronically being the date of availability June 18, 2021 and the

automatic rejection date on the 29th of the same month and year, as evidenced by the

certificate issued by the FNMT that is in the file.

: Formal notification of the start agreement, the claim at the time of the

SIXTH

This resolution has not submitted a brief of arguments, so it is

application of what is stated in article 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations, which in its section f) establishes that in the event of not making allegations within the stipulated period on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts:

PROVEN FACTS

FIRST: It is known that the defendant has an Instagram page called "RITMICASANTONIO" in which images of minors performing training.

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SECOND: That the claimant has told the respondent that she does not want publish images of their daughters on social networks, that they have not given their permission to photograph and record their daughters.

THIRD: On June 18, 2021, this sanctioning procedure was initiated by the infringement of article 6 of the RGPD (legality of the treatment), being notified on the 29th of the same month and year. Not having made allegations, the respondent, to the agreement Of start.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD,

The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

The defendant is imputed the commission of an infraction for violation of the Article 6 of the RGPD, "Legality of the treatment", which indicates in its section 1 the assumptions in which the processing of third party data is considered lawful:

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

- a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

(...)"

III

Sections b), d) and i) of article 58.2 of the RGPD provide the following:

"2 Each supervisory authority shall have all of the following powers corrections listed below:

(...)

- b) send a warning to any person responsible or in charge of the treatment when the treatment operations have violated the provisions of this Regulation;"

(...)

- "d) order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate,

in a specified manner and within a specified period;”

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“i) impose an administrative fine in accordance with article 83, in addition to or in
instead of the measures mentioned in this paragraph, depending on the circumstances
of each particular case;

The infringement is typified in Article 83.5 of the RGPD, which considers as such:

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

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

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the
Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements
considered very serious” provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.)
2016/679 are considered very serious and the infractions that
suppose a substantial violation of the articles mentioned in it and, in
particularly the following:

(...)

a) The processing of personal data without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the

Regulation (EU) 2016/679.”

IV

The documentation in the file offers evidence that the

claimed, has an Instagram page called "RITMICASANTONIO" in which

images of minors performing exercises are published. That the claimant has

manifested several times to the defendant, the last one on February 5, 2021, that

does not want images of her daughters to be published on social media and that she does not

they have the authorization to photograph and record their daughters.

Well, the defendant has violated article 6.1 of the RGPD, since

published images on Instagram of the claimant's daughters, without having any

legitimacy for it. It does not prove the legitimacy for the treatment of the data of

the minor daughters, 10 and 12 years of age, of the claimant.

It is noteworthy that information on these facts was requested from the respondent, on 9

and on February 22, 2021, although it is known that the second of the

notifications by the postal service on March 3, 2021, has not

replied to this Agency.

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Likewise, it is clear that the Agreement to Initiate this proceeding was

notified on June 29, 2021. However, the respondent has not made

allegations to it.

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In accordance with the evidence available, the facts set forth constitute, on the part of the defendant, an infringement of the provisions of article 6.1 a) of the GDPR.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the RGD:

As aggravating the following:

☐ In the present case we are dealing with gross negligence (article 83.2 b).

☐ Personal data is affected – the image, which makes them identifiable – of two minors, to whom the regulations of data protection protects in a special way (art.83.2g).

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGD, the claimed, as responsible for the treatment, is ordered so that in the within one month take the necessary measures to remove the image from the minors, in accordance with the provisions of article 6.1 a), as well as the provision of supporting evidence of compliance with the requirements.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE SAN ANTONIO RHYTHMIC GYMNASTICS CLUB, with NIF G57922429, for an infringement of Article 6 of the RGD, typified in Article 83.5 of the RGD, a fine of €5,000 (five thousand euros).

SECOND: ORDER CLUB RHYTHMIC GYMNASTICS SAN ANTONIO, with NIF G57922429 so that within a period of one month in accordance with the provisions of the article 58.2.d) of the RGD, adopt the necessary measures to withdraw the image of the two minors, in accordance with the provisions of article 6.1 a), as well as the provision of supporting evidence of compliance with the

required.

THIRD: NOTIFY this resolution to CLUB GIMNASIA RÍTMICA SAN

ANTONIO, with NIF G57922429.

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

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

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

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

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

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

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

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

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary payment will be until the 20th day of the following month or immediately after, and if

is between the 16th and last day of each month, both inclusive, the term of the

payment will be until the 5th of the second following month or immediately after.

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 period of

month 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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

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

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

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

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

precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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