

□ Procedure No.: PS/00093/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: COMMAND OF ***LOCALITY.1 (*hereinafter, the claimant) with

On November 4, 2020, he filed a claim with the Spanish Agency for

Data Protection. The claim is directed against the FRIGORIFICA entity

BOTANA, S.L. with CIF B15726938 (hereinafter, the claimed). The reasons in which

the claim is based on are succinctly the following:

“Dated 11/20/19 as a result of an operation (...) Civil Guard agents

person in the dependencies of the company Frigorífica Botánica SL to carry out a study

of traceability of the frozen Norway lobster that was deposited there and that was

immobilized (...) so the manager sets up a meeting room for the Agents.

“Attached to the allegations is a recording made to the Agents

in the company meeting room. Said audio (video) recording was taken on

11/20/19 (Written arguments presented are attached, having a copy of all

it and in the aforementioned Court).

As can be seen in the following images of the Company's facade

that are attached DOES NOT have an informative badge with the mandatory information

(...)

Therefore, audio recording is considered a measure that does not respond to the

principle of proportionality contained in the LOPDGDD, which violates the right

to privacy recognized in the CE and violates the secrecy of communications (...)

being for all this illegal”.

“It is also worth highlighting art. 8 LOPDGDD that regulates the treatment by

legal obligation, public interest or exercise of public powers (...)”

Together with the claim, provide a written copy of the allegations presented in the

Contentious-administrative Court (**LOCATION.1-Doc- nº1 --.

SECOND: On 01/12/20, the claim is TRANSFERRED to the entity

denounced, which proceeds to answer on 01/01/21.

THIRD. The defendant makes the corresponding allegations on 01/01/21

requesting the annulment of the proceedings.

FOURTH: On 02/23/21, the claim was admitted for processing.

diate act of the Director of this Agency, in accordance with the provisions of the article

Article 65 LOPDGDD.

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FIFTH: On April 23, 2021, the Director of the Spanish Agency for Pro-

Data Protection agreed to initiate a sanctioning procedure against the defendant, in accordance with

the provisions of articles 63 and 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Procedure of Public Administrations (hereinafter, LPA-

CAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article

83.5 of the GDPR.

SIXTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written

allegations on 05/11/21 in which, in summary, it stated the following:

“According to what has been provided in response to the request made by this

Agency, FRIGORIFICA BOTANA, S.L. yes, it has posters in its facilities

that report the existence of video surveillance, in the terms required by the regulations.

application mat. Such posters are not only located at the entrance to the facilities, but in different spaces of the cold store, in such a way that the agents having carried out their inspection throughout the warehouse space were ple-aware of the existence of a closed internal video surveillance circuit.

The agents of the authority can be recorded in the exercise of their functions.

nes. Public authorities do not enjoy fundamental rights in the exercise of their positions, but such rights are recognized to citizens as limits to your activity.

Therefore, the recording of the agents of the authority in the exercise of their functions in itself does not constitute an illegitimate or disproportionate treatment of the personal data of the agents.

The camera is located in a space that is not accessed by workers. and has different uses apart from sound and image recording (video conferencing). national and international references). The meeting room is only accessible by staff from senior management of the company being an area of execution and management of activities essential management, therefore, its use is proportionate to the purposes pursued.

The use of the recordings was exclusively judicial, within the framework of a procedure where the actions of the acting agents were expressly analyzed. and complainants, in order to clarify the facts contained.

Therefore, the complaint made by the agents to this Agency seems to have have the purpose of avoiding or limiting the judicial actions deployed by the Court of the Contentious-Administrative No. 2 of ***LOCALIDAD.1, and the jurisdictional control of his professional performance in the facilities of FRIGORIFICA BOTANA, S.L. It is- In other words, it is a complaint that seems to be used for a purpose other than protection. tion of personal data”.

SEVENTH: On 07/23/21, a "Resolution Proposal" is issued confirming

ma the described infringement of art. 5.1 c) GDPR, proposing an initial encrypted sanction

in the amount of €4,000, given the seriousness of the facts exposed.

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EIGHTH: When the database of this organization was consulted on 09/05/21, no

received any response in this regard, nor any additional documentation

provided.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

First. The facts bring cause of the claim presented by the Civil Guard

(Comandancia ***LOCALIDAD.1) that they indicate to have been recorded in a room of

meetings by the company Frigorifica Botana S.L. without informing them about it,

carrying out a treatment of the personal data of the agents outside the cases

permitted by law.

Second. It is identified as the main person responsible for the Frigorifi-

ca Botana S.L. which does not deny the presence of the camera, pointing out that the agents

"They were recorded in the exercise of their functions."

Third. The data of the Civil Guard Agents were processed and transferred to

contentious-administrative court where a video is presented in court

of the Contentious-administrative No. 2 (**LOCATION.1) with audio and video of the same

mos.

Bedroom. It is proven that the defendant has informative posters in the access area to the facilities, but not in the meeting room where carried out investigative tasks by the acting force.

Fifth. The Civil Guard agents were not informed in any way of the presence of a camera outside the security system inside the meetings, nor were they told the cause/reason for proceeding to the recording of the images.

Sixth. No "abusive" situation has been found that could legitimize the use of the images, limiting the issue to merely administrative aspects related to the presumed illegality of the search carried out in the facilities of the claimed.

FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, 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 resolve this procedure.

II

Before going into the substance of the matter, it should be noted that the request for annulment of situations of the search carried out by the Civil Guard (Comandancia ***LOCALIDAD.1)

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It is an issue that is subject to analysis in a contentious-administrative court,

this being a matter to be resolved in court, without the reason being clarified

provision of documentary evidence (video) to discuss an alleged act

irregular situation of the State Security Forces and Bodies.

One thing is an alleged illegality of an administrative act and quite another

presumed criminal action of the Acting Force, an aspect that is not the responsibility

you to determine it by this Agency.

The images of the Agents as public employees are not without gravity.

tion, as the respondent correctly affirms, although not in all cases and with

certain limitations, such as the case of conversations or interrogations

made by them.

A videoconference is a simultaneous two-way communication of audio and video,

that allows remote meetings with groups of people, through

a network such as the Internet.

The videoconference can be used to hold meetings, provide teletraining,

provide health care to a patient, present a service or product, advise

fiscal, labor or legal to clients, etc.

With regard to privacy, online communication via videoconference

does not differ too much from what is usually done in person, now

well, we must bear in mind that there will be particular issues and elements that must be

we will respect for it to take place in a safe environment that respects privacy

data subject, and the confidentiality, integrity and availability of the information

(including personal).

The claim itself determines the nature of the camera "make videoconference"

international references for commercial reasons" not forming part of the prison system.

cameras installed for reasons of safety of the installations, but for professional purposes.

nals related to the activity of the aforementioned company.

It goes without saying that a mere indication a few moments before would have sufficed.

recording, indicating the reason(s) for making them, including the arguments

mentioning "to avoid irregularities", but the Agents acting must be aware of

before the audio (video) recording made in the room in question, as it entails the

itself a "treatment of your data" without any clarification having been made.

The work of the Civil Guard agents in inspection tasks is not

part of the commercial activity of the defendant, so that the cameras were used

cited for a purpose other than their own: commercial tasks related to

related to the business activity.

For the foregoing reasons, the arguments put forward should be dismissed.

in the exercise of the right to defense (art. 24 CE), without being able to speak of defenselessness.

any pressure at the time of exposing the outlined claims.

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III

In the present case, the claim dated 11/04/20 is examined by me-

gave from which the following is transferred as the main fact:

"absence of informative signs indicating that it is a video zone

guarded"

The initial facts are specified in the absence of indi-

When it is a video-monitored area, when the images are recorded

of the members of the Security Forces and Bodies inside a room of

meetings.

The system was provided with audio recording, the conversion being recorded.

sation that took place in said meeting, without the agents of the authority being trained about it.

This type of camera is limited to company personnel, and their informed use in a "clear and express" manner, an issue that was not carried out, since the Agents authorities although they observed the same, they were not informed of the recordings tion of the conversations produced.

The law vetoes the installation of sound recording and video surveillance systems in the places intended for the rest of the workers, such as changing rooms, toilets and dining rooms.

As far as sound capture and recording devices are concerned, their use will only be allowed when the risks are relevant to the safety ity of the facilities, goods and people derived from the activity carried out lle in the workplace. In any case, the principles must always be respected. of proportionality and minimal intervention.

Article 5 section 1 GDPR "Principles related to treatment" provides that: "The personal data will be:

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

Likewise, the installation of the camera system(s) denounced may suppose a "trade use of images" (personal data) of third parties without just cause, to the power bar and preserve their images, thereby affecting their right to privacy. half.

It is a criterion maintained by this body that with this type of device there is no private conversations are recorded, even less surreptitiously, unaware do the parties that in the meeting room the system was operational and recorded

(audio Video).

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The only exception to this rule applies if the recordings have been judicially authorized and, in any case, must be carried out by qualified professionals specially designated for this task.

IV

In accordance with the clear evidence available in this pro-sanctioning procedure, it is considered that the defendant has a system of (audio/video) disproportionately in a meeting room, having "processed data" of the acting Agents without just cause and without informing them in advance. mind in legal form.

The documentary evidence provided by the acting force is considered sufficient. enough to undermine the presumption of innocence of the respondent, whose allegations have done nothing but confirm the diversion of purpose in the "processing of images" observed in a meeting room, where without prior warning they were recorded without in-educate them in advance about the cause/reason for such filming.

The known facts constitute an infraction, attributable to the claimant. mado, for violation of the content of art. 5.1 c) GDPR.

Article 83.5 letter a) RGPD provides the following:

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"Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, alternatively,

being from a company, of an amount equivalent to a maximum of 4% of the volume

overall annual total turnover of the previous financial year, opting for the

greater amount:

to)

basic principles for treatment, including conditions for con-

sentiment under articles 5, 6, 7 and 9;

For the purposes of the limitation period for infractions, the infraction indicated on the

previous paragraph is considered very serious and prescribes after three years, in accordance with article

72.1 of the LOPDGDD, which establishes that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679

are considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data violating the principles and guarantees established

established in article 5 of Regulation (EU) 2016/679.

When motivating the sanction, the following is taken into account:

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-the nature of the infraction by having a video-surveillance system that

has the audio recording modality, dealing with data of natural persons

identifiable (art. 83.5 a) RGPD).

-the intentionality or negligence of the infraction, the camera(s) was not due-

signaled mind (s) of the treatment or the purpose of obtaining the images, which

which makes the behavior be considered "negligent" for the reasons stated (art.

83.5 b) GDPR).

The images obtained with the recording cameras installed in a room of meeting of the claimed were used without informing of the purpose of the treatment, producing a "data treatment" that does not fit the initial purpose of these: commercial purposes related to the activity of the company.

For all these reasons, a pecuniary penalty is proposed in the amount of €4,000 (Four Thousand Euros), for the infringement of art. 5.1 c) RGPD, sanction located in the lower scale for this type of infraction.

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

FIRST: IMPOSE the entity FRIGORIFICA BOTANA, S.L., with CIF B15726938, for an infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a fine of €4,000 (Four Thousand Euros).

SECOND: NOTIFY this resolution to FRIGORIFICA BOTANA, S.L. and REPORT the result of the actions to the claimant COMMANDANCE OF ***LOCATION.1.

THIRD: 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 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

between the 1st and 15th of each month, both inclusive, the term to make the payment

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

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

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

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

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

Against this resolution, which puts an end to the administrative procedure 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.

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

may provisionally suspend the firm resolution in administrative proceedings if the

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

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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