

Procedure No.: PS/00125/2019

RESOLUTION: R/00230/2019

In procedure PS/00125/2019, instructed by the Spanish Agency for Data Protection to the entity CASTILLO Y GASPAR, S.L., given the complaint presented by D. G. OF THE CIVIL GUARD - FISCAL POST OF LLEIDA-- and in virtue of the following,

FACTS

FIRST: D. G. OF THE CIVIL GUARD - PROSECUTOR POST OF LLEIDA (*in hereinafter, the claimant) on February 18, 2019 filed a claim with the Spanish Data Protection Agency, motivated by data processing carried out through cameras of a video surveillance system whose owner is CASTILLO Y GASPAR, S.L. with NIF B25323494 (hereinafter the claimed) installed in AVENUE OF THE EXERCIT 44, LLEIDA.

The reasons on which the claim is based are "installation of a camera with orientation towards the outside terrace in the Punto Estrella Dalmau bar, which lacks informative poster" (folio nº 1).

Attached is the Complaint Report of the patrol displaced to the scene of the events (Doc. evidence no. 1).

SECOND: Having consulted the computer system of this body, it should be noted that proceeded to warn the accused of the "facts" described, within the framework of the procedure with reference number E/02700/2018, without any response or corrective action has been taken to that effect, despite the notification made to such effect.

THIRD: On 03/20/2019, the name of the Restaurant denounced -Punto Estrella Dalmau- stating as "open" and the

following address Avinguda de L'Exèrcit, 44, 25091 Lleida, so there are no indications that it does not carry out the hospitality activity it provides habitually.

FOURTH: On March 27, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00125/2019. This agreement was notified to denounced.

FIFTH: Consulting the computer system of this body, there is no evidence that any allegation has been made in relation to the facts described.

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PROVEN FACTS

First. On 02/18/19, this Agency received a claim transferred by the State Security Forces and Bodies motivated by the “absence of cartel informative” in the hotel establishment Bar Punto Estrella Dalmau.

Attached is the Complaint Report of the patrol displaced to the scene of the events (Doc. evidence no. 1).

Second: Castillo y Gaspar S.L. is identified as the main person responsible with NIF B25323494.

Third: It is proven that the establishment does not have the mandatory sign informative in a visible area indicating the person responsible for the file before whom you can exercise the rights regulated in the regulations in force.

Fourth: It is accredited that the Start Agreement has been sent

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taken by the accused party.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

In the present case, we proceed to examine the claim transferred by the Forces and State Security Corps motivated by the "absence of an information poster" in the hotel establishment Bar Punto Estrella Dalmau.

The facts described suppose an affectation to the right to information, the defendant failing to comply with the obligation to have an information poster in the area visible indicating that it is a video-monitored area.

Article 12 RGPD provides the following:

"1. The person responsible for the treatment will take the appropriate measures to facilitate to the interested party all the information indicated in articles 13 and 14, as well as any communication under articles 15 to 22 and 34 relating to processing, in the form concise, transparent, intelligible and easily accessible, with clear and simple language, in particular any information directed specifically at a child. Information shall be provided in writing or by other means, including, if applicable, by electronics. When requested by the interested party, the information may be provided verbally provided that the identity of the interested party is proven by other means.

"two. The person responsible for the treatment will facilitate the interested party in the exercise of their

rights under articles 15 to 22. In the cases referred to in article 11,

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section 2, the person in charge will not refuse to act at the request of the interested party in order to exercise your rights under articles 15 to 22, unless you can demonstrate that it is not in a position to identify the interested party”.

For its part, section 4 of article 22 LOPDGDD (LO 3/2018, December 5) provides the following:

“The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights provided for in the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code or internet address to this information”.

The administrative infraction is accredited with the Report-Denunciation transferred to this body, after verifications carried out by the Forces and Bodies of State Security transferred to the place of the “facts”.

Article 77 section 5 of Law 39/2015 (October 1)-LPAC-- provides the

Next:

“The documents formalized by the officials who are recognized as condition of authority and in which, observing the legal requirements corresponding the facts verified by those are gathered will prove of

unless proven otherwise”.

Article 74.1 a) LOPDGDD (LO 3/2018, December 5) provides: "It is considered minor and will prescribe after a year the remaining infractions of a merely formal of the articles mentioned in paragraphs 4 and 5 of article 83 of Regulation (EU) 2016/679 and, in particular, the following:

a) Failure to comply with the principle of transparency of information or the right to information of the affected party for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679.

So it is considered proven that the accused does not have the mandatory informative poster, infringing the content of article 12 RGPD.

III

Article 83 section 5 of the RGPD provides the following:

“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, 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:

b) the rights of the interested parties according to articles 12 to 22; (...)”

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation with what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however

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Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

In the present case, it is taken into account that it is a small company, who lacks experience in the new data protection regulations, being a space of limited scope, as it is the terrace of your own establishment.

IV

In accordance with the foregoing, it can be concluded that the infringement is proven transferred to this Agency, the defendant failing to comply with the duty to report the existence of a video-surveillance system in your hotel establishment, in the terms of article 12 RGPD.

The defendant must proceed to place in a visible area (eg entrance of the establishment) an informative sign(s) indicating the person responsible for the file, as well how to have in the establishment of forms available to any client that might require them; having to prove the measures adopted before this Agency reliably.

Finally, remember that the accused party has been fully informed by this Agency, as well as by the State Security Forces and Corps transferred to the scene of the events, and the continuity of the conduct may incur offending in the opening of a sanctioning procedure of an economic nature or

incurring in breach of the duty to collaborate with this body, which is put

to your knowledge for the appropriate legal purposes.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- NOTICE (PS/00125/2019) to the entity CASTILLO Y GASPAR, S.L., with

in relation to the complaint transferred for violation of article 12 RGPD, typified in the

article 83.5 b) RGPD, as it does not have the mandatory informative distinctive in its

hotel establishment, being sanctioned in accordance with art. 58.2 GDPR.

2.- REQUEST CASTILLO Y GASPAR, S.L. so that it is appropriate to adapt the system of

video-surveillance to the regulations in force, and must report the result of the

actions within a maximum period of ONE MONTH counting from the following

notification of this administrative act:

☐ You must place an informative poster(s), indicating the person responsible for it, in visible area, providing a photograph with date and time that proves what has been done.

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☐ You must have a form(s) in the establishment adapted to the

Legislation in force and available to any user of the establishment

hotelier.

3.- NOTIFY this Agreement to CASTILLO Y GASPAR, S.L. and REPORT the

result of the actions to the denouncing party D. G. DE LA GUARDIA CIVIL -

--LLEIDA TAX OFFICE--.

Against this resolution, which puts an end to the administrative procedure (article 48.2 of the LOPD), and in accordance with the provisions of articles 112 and 123 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, the interested parties may optionally file appeal for reconsideration before the Director of the Spanish Data Protection Agency within one month from the day following the notification of this resolution, or, directly contentious-administrative appeal before the Chamber of the Contentious-administrative of the National Court, in accordance with the provisions of the Article 25 and in section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction, within the period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned legal text.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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