1/10

938-0419

Procedure No.: PS/00352/2018

RESOLUTION OF PUNISHMENT PROCEDURE

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

to the following

**BACKGROUND** 

FIRST: On May 18, 2018, a written entry is registered.

by the General Directorate of the Municipal Police of the Madrid City Council (in

hereinafter, the claimant), making it clear that due to the inspection

practiced, on April 25, 2018, in the establishment called "BAR

EL TOLEDANO", located at \*\*\*ADDRESS.1, owned by the company

KIOROMAR, S.L., (hereinafter, the defendant), the acting agents verified that

said establishment has installed security cameras and lacks posters

informative.

Attached to said letter is a copy of the "Inspection Act on the Matter of

Public Shows and Recreational Activities" raised on April 25,

2018 by the acting agents belonging to the UID of the District of Tetuán, and whose

Police numbers are on it. In this Act, signed by Mr. A.A.A., (in

hereinafter, A.A.A.), as an employee of the establishment, and by the aforementioned

acting agents, it is stated that the "Recording of images of

continuously, not having a poster informing the affected person about the treatment of

your personal information".

SECOND: On July 6, 2018, the company KIOROMAR, S.L., holder of the

said establishment, was required by this Agency to provide

detailed documentation that accredits that the installation of the

video surveillance was in accordance with data protection regulations and that, in particular, was duly signposted and was limited to capturing images of land and adjoining homes or any other external space, provided for this recent graphic documents duly dated.

On July 20, 2018, the entry is registered in this Agency the following documentation provided by the aforementioned company:

Copy of the notification addressed to it dated May 3,

2018 by this Agency notifying you of the registration in the General Registry of Data protection of the "Video surveillance" file.

Printing of two photographs of the interior of an establishment identified. One of them appears captured on July 14, 2018 and the other includes hand annotation with the same date. Both photographs, in black and white, they are very blurry, not allowing the cameras to be located clearly and reliably.

C/ Jorge Juan, 6

28001 - Madrid

www.aepd.es

sedeagpd.gob.es

Print of a black and white photograph showing a badge video surveillance area. The content, as a whole, is practically unreadable, in In particular, the information that the data controller must provide to users.

Notwithstanding which, it is noted that said poster refers to the Organic Law 15/1999, on Data Protection instead of mentioning the RGPD, applicable from May 25, 2018. This photograph is not dated or shows information

any that allows locating the exact place of placement of the poster or that it was in the access to "BAR EL TOLEDANO".

In view of the characteristics of the documentation provided and the lack of express response to the required ends, dated July 8, 2018 sends to said company a request for additional documentation in the following terms: "You must provide an image of the poster that warns of the existence of a zone video surveillance, clearly showing where it is exposed and including the identification data of the person in charge of the treatment (the holder of the system of video surveillance) before which to exercise the rights recognized in the regulations of data protection."

Notwithstanding that the aforementioned request was received by KIOROMAR, S.L. with dated August 22, 2018, to date there is no answer to it.

THIRD: On December 11, 2018, the Director of the Spanish Agency
of Data Protection agreed to initiate a sanctioning procedure against the company
KIOROMAR, S.L. for the alleged infringement of articles 12.1 and 13 of the Regulation
(EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding
to the protection of natural persons with regard to data processing
personal information and the free circulation of these data, (hereinafter RGPD), in accordance
with the provisions of article 58 section 2 of the same rule, considering that the
sanction that could correspond would be a WARNING, without prejudice to what
will result from the instruction.

FOURTH: Notification of the aforementioned initiation agreement, dated 19 and 20

December 2018, two separate documents are registered in that Agency through

which the defendant is limited to providing a photographic report in which, among

others, there are two photographs that show a video-surveillance zone sign referring to

Organic Law 15/1999, on Data Protection, and whose exact location is not indicated

in the aforementioned writings nor is it recognizable from the images provided, whose date of obtaining is also not provided. He also provides two photographs show a camera located inside a room, specifically on the ceiling of the bar area.

FIFTH: On March 18, 2019, a resolution proposal was formulated in the sense that, in accordance with the provisions of article 58.2.b) of the RGPD, imposed by the Director of the Spanish Agency for Data Protection to KIOROMAR, S.L. (BAR EL TOLEDANO), a sanction of WARNING for a infringement of the provisions of articles 12.1 and 13 of the RGPD in relation to the provided in article 22.4 of the LOPDGDD, typified in article 83.5.b) RGPD. Similarly, in the event that the claimant has not accredited the rectification of the irregular situation prior to the issuance of the resolution that 3/10

decided the present procedure, and in accordance with the provisions of article 58.2.d) of the RGPD, the specific measures were proposed whose adoption, within the term of one month, counting from the day following the notification of the resolution of the procedure, the Director of the AEPD could order KIOROMAR, S.L.

The aforementioned proposal was notified on March 19, 2019 to the mentioned entity, there is no evidence that it has exercised its right to formulate arguments in his defense and present the documents and information that deemed pertinent within the ten-day period granted for such purposes. Either it is accredited in the procedure that the defendant has adopted measures aimed at correcting the irregular situation that has given rise to the processing of the same.

SIXTH: Of the actions carried out in this proceeding, they have been accredited the following:

## PROVEN FACTS:

First: On the occasion of the inspection carried out on April 25, 2018 by agents of the UID of the District of Tetuán of the Municipal Police of the City Council of Madrid in the establishment called "BAR EL TOLEDANO", located in the \*\*\*ADDRESS.1, the "Act of Inspection in Matter of Shows" was drawn up Public and Recreational Activities", in which said officials stated, among other irregularities detected, that in said premises the "Recording of images continuously, not having a poster informing the affected person about of the processing of your personal data".

Said Minutes are signed by the acting agents, identified by their respective police numbers, as well as by Mr. A.A.A., as an employee of the establishment.

SECOND: The company KIOROMAR, S.L. holds the ownership of the aforementioned "BAR EL TOLEDANO", being also responsible for the processing of personal data personnel that are collected through the video surveillance system installed in your inside.

THIRD: On July 20, December 19 and 20, 2018, the owner company
of the aforementioned establishment has provided two photographs of an informative poster of
video-monitored area that does not conform to the RGPD, current regulations on
data protection on those dates, not including any information
relating to the extremes outlined in articles 12 and 13 of the RGPD or any code
connection or internet address that leads to it.

**FOUNDATIONS OF LAW** 

Yo

By virtue of the powers that articles 56.2 and 58.2 of the Regulation

(EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding

to the protection of natural persons with regard to data processing personal information and the free circulation of these data, (hereinafter RGPD), recognize C/ Jorge Juan, 6

28001 - Madrid

www.aepd.es

sedeagpd.gob.es

each control authority, and as established in arts. 47 and 48.1 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of
digital rights (hereinafter LOPDGDD), the Director of the Spanish Agency
of Data Protection is competent to resolve this procedure.

Article 63.2 of Organic Law 3/2018, of December 5, on the Protection of Personal data and guarantee of digital rights (hereinafter LOPDGDD) establishes that: "The procedures processed by the Spanish Protection Agency of Data will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulatory provisions issued in its development and, in as long as they are not contradicted, on a subsidiary basis, by the general rules on administrative procedures."

Ш

Video surveillance allows capturing images through surveillance systems.

video surveillance, so its use affects natural persons identified or

identifiable and constitutes, therefore, a treatment of personal data.

In the present case, the respondent is imputed, in her capacity as

responsible for the treatment for video surveillance purposes carried out in the

establishment of public attendance of its ownership, a violation of the duty of

inform provided for in articles 12.1 and 13 of the RGPD in its relationship with the provisions

in article 22 of the LOPDGDD.

Article 12 of the RGPD, referring to the "Transparency of information, communication and modalities of exercising the rights of the interested party", establishes in its section 1 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 pursuant to 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 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."

  For its part, article 13 of the RGPD, regarding the "Information that must be be provided when the personal data is obtained from the interested party.", determines that:
- 1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:
- a) the identity and contact details of the person in charge and, where appropriate, of their representative;
- b) the contact details of the data protection delegate, if any;
- c) the purposes of the treatment to which the personal data is destined and the basis legal treatment;
- d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;

5/10

e) the recipients or categories of recipients of the personal data, in your case;

- f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.
- 2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent
- a) the period during which the personal data will be kept or, when not possible, the criteria used to determine this period;
- b) the existence of the right to request from the data controller access
  to the personal data related to the interested party, and its rectification or deletion, or the
  limitation of its treatment, or to oppose the treatment, as well as the right to
  data portability;
- c) when the treatment is based on article 6, paragraph 1, letter a), or the

  Article 9, paragraph 2, letter a), the existence of the right to withdraw consent in

  any time, without affecting the legality of the treatment based on the

  consent prior to its withdrawal;
- d) the right to file a claim with a supervisory authority;
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;
- f) the existence of automated decisions, including profiling, to

referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

- 3. When the person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said further treatment, information for that other purpose and any additional information relevant to the meaning of paragraph 2.
- 4. The provisions of sections 1, 2 and 3 shall not apply when and in to the extent that the interested party already has the information.
  These precepts, given the peculiarities of the treatment under study,
  must be related to the provisions of article 22.4 of the LOPDGDD for cases
  of "Processing for video surveillance purposes", providing therein that:
- "4. 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
  C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

informative device a connection code or internet address to this

information.

In any case, the data controller must keep available to

those affected the information referred to in the aforementioned regulation.

In accordance with the aforementioned GDPR precepts, which determine the information

that must be provided to the interested party at the time of collecting their data, and provided in the aforementioned article 22.4 of the LOPDGDD, with regard to the compliance with the duty of information, it is considered that the person responsible for the treatment, you must:

- 1. Place at least one informative badge in the video-monitored areas
  located in a visible place, and at least, at the entrances to the monitored areas, whether they are
  interiors or exteriors. If there are several accesses to the video-monitored space, the aforementioned
  badge must be placed on each of them.
- 2. The video-surveillance zone badge must inform about the existence of the video surveillance treatment, the identity and contact details of the person responsible for the treatment or the video surveillance system and the possibility of exercising the rights recognized in them articles 15 to 22 of the RGPD. Such information may also be included by means of a connection code or internet address that leads to it.
- 3. Keep at the disposal of the interested parties the rest of the information that must be provided to those affected in compliance with the right to information regulated in the aforementioned Regulation (EU) 2016/679, of April 27, 2016.

Ш

In this case, due to the inspection carried out on April 25,

2018, by the agents of the Local Police of the Madrid City Council in the "BAR EL TOLEDANO", owned by the company KIOROMAR, S.L., they verified, according to appears in the Inspection Act drawn up by them that, among other irregularities that were detailed in said document, the "Recording of images of continuously, not having a poster informing the affected person about the treatment of your personal information".

In relation to said document, it is pointed out that article 77.5 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations, under the heading "Means and trial period", provides the Next:

"5. 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".

In the present case, the claimed party, both after receiving the transfer of the claim as after the notification of the agreement to start the present sanctioning procedure, has been limited to presenting two photographs of a "video-surveillance zone" sign that is not appropriate to the current regulations of data protection, since the different informative alludes to the Organic Law 15/1999, of December 13, on the Protection of Personal Data (in hereinafter LOPD), instead of doing so to the RGPD, already applicable at the time of its 7/10

presentation (July and December 2018). Likewise, said poster does not inform about the identification of the person responsible for the treatment nor does it indicate before whom and where exercise the rights contemplated in articles 15 to 22 of the RGPD.

TEKNOMETRIC, security systems, www.teknometric.com, of the same it follows that it constitutes the link that directs to the outlined information, without part of KIOROMAR, S.L. no documentation or means of proof that allows to prove that the address of the aforementioned website links to the information required in article 13 of the RGPD, which must be available to users. affected whose personal data (images) are captured by security cameras video surveillance.

Regarding the inclusion of the following information: installation carried out by

Likewise, based on the photographs provided, it is not possible to recognize the

exact place of the establishment where said sign is placed, and therefore, if not allows to prove that the aforementioned notice is visible and easily accessible to people whose personal data will be processed through the cameras of video surveillance installed in the local review.

Despite the fact that such irregularities have been revealed in the initiation agreement and proposed resolution notified to the respondent, there is no evidence that it has accredited, in an irrefutable manner, its correction by means of the contribution of valid proof of law.

Consequently, the aforementioned company has violated the right to information of those affected whose personal data (images) may be subject to treatment through the images captured of the same by the cameras of video surveillance installed on the premises, since they are not adequately informed of the ends required by articles 12.1 and 13 of the RGPD.

IV

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) sanction any person responsible or in charge of the treatment with warning when the processing 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;"

"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;

C/ Jorge Juan, 6

28001 - Madrid

www.aepd.es

sedeagpd.gob.es

Article 83 of the RGPD, under the heading "General conditions for the imposition of administrative fines", in its sections 2 and 5.b) states that:

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in article 58, paragraph 2, letters a) to h) and j). (...) "

"5. Violations 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;".

For its part, article 71 of the LOPDGDD establishes that "They constitute infractions the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the this organic law.", establishing in article 74 of said Law that: "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."

v

From the reasons, it is evident that the company KIORORMAR, S.L. has not accredited to comply with the right held by the interested parties affected by the collection and recording of your personal data through the video surveillance system installed in the "BAR EL TOLEDANO" to be informed of the ends above outlined, which constitutes an infringement of the provisions of articles 12.1 and 13 of the RGPD in its relationship with the provisions of article 22.4 of the LOPDGDD, typified in article 83.5.b) of the RGPD and qualified as minor for the purposes of prescription in the Article 74.a) of the LOPDGDD.

In the present case, it is considered appropriate to impose on the respondent the penalty of warning provided for in article 58.2.b) of the RGPD in view of the following circumstances: it is a company whose main activity is not is linked to the usual treatment of personal data, the absence of intentionality in the offending behavior given that the treatment of video surveillance images carried out inside the establishment responds to purposes of security of goods and people, also considering that the fine administrative that could fall in accordance with the provisions of article 83.5.b) of the GDPR would constitute a disproportionate burden for said company.

Confirmed the commission of the infraction, and not stating that the claimed has adopted measures to repair the irregular situation described, by virtue of what established in the aforementioned article 58.2.d) of the RGPD, it is considered appropriate to order the mercantile KIOROMAR, S.L., responsible for the treatment, that the technical and organizational measures necessary so that the processing operations

comply with the provisions of articles 12.1 and 13 of the RGPD in relation to the provided for in article 22.4 of the LOPDGDD.

These measures must be adopted and accredited within ONE MONTH, computed from the date on which the sanctioning resolution is notified. For it Graphic documentation or any other valid means of proof must be provided in right that allows verifying the date of its obtaining, verifying the exact location of the video-surveillance zone signs installed in the establishment, make the content of the information contained therein, as well as verifying the information to which the connection code or internet address that allows link with said information or, even, with the rest of the information that must be facilitated to those affected by this type of treatment. In any case, they must accredit the mechanisms implemented to facilitate the information that must be placed available to those affected in compliance with the right to information regulated in the GDPR.

In relation to this competence, it is observed that section 6 of article 83 of the RGPD, establishes that "6. Failure to comply with the resolutions of the authority of control pursuant to article 58, paragraph 2, shall be sanctioned in accordance with paragraph 2 of this article with administrative fines of EUR 20,000,000 maximum 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."

For its part, article 72.1.m) of the LOPDGDD provides that: "1. Function of what is established in article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a violation substance of the articles mentioned therein and, in particular, the following: (...)

m) Failure to comply with the resolutions issued by the authority of

competent data protection in exercise of the powers conferred by article 58.2 of Regulation (EU) 2016/679."

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 KIOROMAR, S.L. (BAR EL TOLEDANO), with NIF \*\*\*NIF.1, of In accordance with the provisions of article 58.2.b) of the RGPD, a sanction of WARNING for a violation of the provisions of articles 12.1 and 13 of the RGPD, typified in article 83.5.b) RGPD.

SECOND: ORDER KIOROMAR, S.L. (BAR EL TOLEDANO), in accordance with the provisions of article 58.2.d) of the RGPD, the adoption and implementation of the measures indicated below, all of them aimed at adapting the content of the information offered in the "video surveillance zone" badge to the regulations of current data protection, and for whose compliance and accreditation is granted to the claimed within ONE MONTH from the day following the notification of the this resolution:

C/ Jorge Juan, 6

28001 - Madrid

www.aepd.es

sedeagpd.gob.es

- 1 Place in the video-monitored areas, at least, an informative badge located in a visible place, and at least, at the entrances to the monitored areas, whether they are interiors or exteriors. If there are several accesses to the video-monitored space, the distinctive outlined must be placed on each of them.
- 2 The video-surveillance zone badge must inform, at least, about the existence of video surveillance processing, identity and contact details

of the data controller or the video surveillance system and the possibility to exercise the rights recognized in articles 15 to 22 of the RGPD. Bliss information may also be included by means of a connection code or Internet address that leads to it.

3 Keep at the disposal of the interested parties the rest of the information that must be be provided to those affected in compliance with the right to information regulated in the aforementioned Regulation (EU) 2016/679, of April 27, 2016.

THIRD: NOTIFY this resolution to KIOROMAR, S.L. (BAR THE TOLEDANO).

aforementioned Law.

In accordance with the provisions of article 50 of the LOPDPGDD, 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 LOPDPGDD, 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

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-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

Director of the Spanish Data Protection Agency