

□ File No.: EXP202101487

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (*hereinafter, the complaining party) dated August 13, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against CONTIMAG INVEST, S.L. with NIF B55266779 (in

hereafter, the party claimed). The grounds on which the claim is based are

following:

"I am a worker at the ***EMPRESA.1 restaurant, when I go to work on the

05/15/2021 they did not give me to sign the authorization and information of the cameras that

they record and have sound because of the data protection law, the boss was looking at us

every day from home, they do not have legal signage signs for video cameras

surveillance, the camera they have in the back of the restaurant the one they have

to monitor the prefabricated module, it records a large part of the square and public thoroughfare,

To make sure that I wanted to report, they have put two stickers that show a drawing of a camera.

mara and puts camera I will attach photos of before without sticker and current with sticker "

(folio no. 1).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), said claim was transferred to the claimed party in fe-

cha 08/26/21 and 09/06/21, to proceed to its analysis and inform this Agency

within a month, of the actions carried out to adapt to the requirements

provided for in the data protection regulations.

No response has been received to this letter, nor any clarification about the system installed.

felling has been carried out legally.

THIRD: On November 23, 2021, the Director of the Spanish Agency of Data Protection agreed to admit for processing the claim presented by the party claimant.

FOURTH: On January 5, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: The database of this Agency consulted on 03/09/22 has not been received no response, nor has any explanation been made about the facts transfer object has occurred.

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In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

First. The facts bring cause of the claim dated 08/13/21 through the which is transferred the "absence of the duty of information" before the existence of a system ma of video-surveillance cameras.

Second. The entity Contimag Invest is accredited as the main responsible entity, S.L with NIF B55266779.

Third. There is evidence of the presence of a poster (as a sticker) where the

word "camera", without the same (s) being homologated to the regulations in force, lacking the indication of the person in charge of the treatment or way of exercising the rights regulated in articles 12-22 RGPD.

The foregoing is corroborated by the documentary evidence (Annex I) provided by the complaining party together with its claim.

Fourth. The presence of video-surveillance devices is accredited, providing the claimant (Annex I photograph 2) objective documentary evidence that corroborates it.

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 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, remember that in the Initiation Agreement of the present procedure it was mentioned that, in the case of not making any allegation to the itself, this could be considered a "resolution proposal".

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP) -provision of which the party claimed was informed in the agreement to open the proceeding- established that if allegations are not made within the stipulated period on the content of the agreement, initiation document, when it contains a precise statement about the response imputed responsibility, may be considered a resolution proposal. In the present In this case, the agreement to initiate the sanctioning file determined the facts in which that the imputation was specified, the infraction of the RGPD attributed to the claimed one and the sanction that could be imposed. Therefore, taking into consideration that the claimant

mada has not formulated allegations to the agreement of beginning of the file and in attention to

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established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered in the present case proposed resolution.

III

In the present case, the claim dated 08/13/21 is examined by medio from which the presence of a camera system is transferred as the main fact video-surveillance "without proper signage" informing that it is a a video-monitored area.

The facts described above may affect the article 13 of the current RGPD, since there is a system of video-surveillance cameras ence that has not been duly informed to the group of employees and clients of the establishment.

In accordance with the aforementioned article, the person responsible for the "treatment" 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 applicable;
- c) the purposes of the treatment to which the personal data is destined and the legal basis presenter;
- treatment schedule; (...).

In principle, the workers of the establishment must be informed of the presence of the cameras, as well as respect the limits established in the recording.

tion of their activities (eg exclusion from certain areas), without prejudice to the presence in the visible area of the informative poster(s) adapted to the regulations in force, mainly Mind the GDPR.

In order for the worker to be aware of the existence of a video surveillance system, and in compliance with the Law on data protection, the company must co-

Locate an informative device indicating the existence of a video surveillance system.

evidence, 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.

IV

In accordance with the extensive evidence available in this prosanctioning procedure, it is considered that the claimed party has a system of video-surveillance cameras that lacks the proper informative signage to the regard.

The claimed (a) has a video-surveillance system without being duly signposted, as there is no sign(s) homologated to the regulations in force, in where the person responsible for the treatment, the purpose or the way of exercising the rights within the framework of data protection regulations.

Remember that you can obtain the appropriate information on the website of this Agency www.aepd.es "Action areas"-Video surveillance" where you will find the

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current poster model, as well as the precise information to comply with the regulations currently in force.

The known facts constitute an infraction, attributable to the party

claimed, for violation of the content of art. 13 GDPR.

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Reporting on video surveillance according to RGPD is an obligation contained in our legislative framework—art. 13 GDPR--.

To adapt to current regulations, the AEPD published the new mandatory poster
river that must be located in spaces that are subject to video surveillance.

Article 22 section 4 of the LOPDGDD (LO 3/2018, December 5) provides:

“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 art. 83.5 RGPD provides the following: “Infringements of the following provisions
will be sanctioned, in accordance with section 2, with administrative fines of 20
EUR 000,000 maximum or, in the case of a company, an equivalent amount.
to a maximum of 4% of the total global annual turnover of the financial year
above, opting for the highest amount:

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

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

- the nature, seriousness and duration of the offence, taking into account the nature
nature, scope or purpose of the treatment operation in question, as well as
the number of interested parties affected and the level of damages suffered
fired; (art. 83.2 a) RGPD), by having a system that has not been duly informed.

sent to the group of workers of the center.

- the intent or negligence in the infringement; (art. 83.2 b) RGPD), when controlling in

presumably excess public transit area, having only stickers

that indicate the word “camera”, the behavior described may be considered a ne-

gross negligence for the reasons stated.

In accordance with the above, it is considered correct to impose an encrypted sanction

in the amount of €1,200 (one thousand two hundred euros), by having a camera system

whose recording is excessive for the purpose pursued, assessing the absence of sanction.

previous tions, although the type of establishment in question is taken into account,

affecting with the cameras the data of both the staff and the clients of the

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itself, without proper signage to that effect, sanction located on the scale

lower for this type of behavior.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria

tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the entity CONTIMAG INVEST, S.L., with NIF B55266779,

for an infringement of Article 13 of the RGPD, typified in Article 83.5 letter b) of the

RGPD, a fine of €1,200 (one thousand two hundred euros).

SECOND: ORDER the claimed party so that within ONE MONTH from

notification of this act, proceed in the following terms:

-Placement of poster(s) in a visible area informing that it is a video area-

monitored in compliance with the requirements of the regulations in force, providing a photograph with

date and time to this Agency.

-Availability in the establishment of form (s) available to the

clients (as) of the same that could require it or in its defect in the web page in

If you have it, it must be easily locatable.

THIRD: NOTIFY this resolution to CONTIMAG INVEST, S.L..

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, of the Administrative Procedure Co-

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

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 in the name of the Spanish Agency

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

Otherwise, it will be collected during 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

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

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

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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

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the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for 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 interested party

do states its intention to file a contentious-administrative appeal. If it is-

In this case, the interested party must formally communicate this fact in writing

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

Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

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

that proves the effective filing of the contentious-administrative appeal. If the

Agency was not aware of the filing of the contentious-administrative appeal

tive within 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

938-150222

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