

Procedure No.: PS/00427/2018

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the claimant) dated September 19, 2018

filed a claim with the Spanish Agency for Data Protection, motivated by

the processing of data carried out through cameras of a video surveillance system

whose owner is identified as NAGASAKI CAFETERIA (*hereinafter the claimed)

installed in ***ADDRESS.1-Langreo-Asturias.

The reasons on which the claim is based are "placement of cameras in the

exterior of the Nagasaki establishment obtaining images of public space" (folio

No. 1).

Along with the claim, provide documentary evidence (photographs Annex I).

SECOND: In view of the reported facts, in accordance with the evidence

that is available, the Data Inspection of this Spanish Agency for the Protection of

Data considers that the treatment of personal data that is carried out by the

denounced through the chambers to which the complaint refers, does not meet the

conditions imposed by the regulations on data protection, for which reason the

opening of this sanctioning procedure.

THIRD: On 10/08/18, the transfer was made to the reported entity, for

that gladdens what in law it deems appropriate, appearing as "Notified" in the

computer system of this Agency.

FOURTH: On 11/13/18, this Agency receives a written statement of allegations from the

entity denounced, in relation to the “facts” object of the complaint.

FIFTH: On July 30, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, 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

pleadings in which, in summary, it states the following:

“That on July 13, 2018, notification of a sanction was received for

alleged infringement of the content of art. 5.1c) RGPD, when you have images of the

public sidewalk disproportionately, not being satisfied with the content

of said notification, we proceed in a timely manner to formalize this WRITTEN

OF ALLEGATIONS, based on the following:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/7

In the present proceeding, having received a single notification, which is

which is appealed here, not being provided documentary evidence (Annex I),

limiting itself to indicating that it existed at the request of the claimant, the

COMMUNITY OF OWNERS OF JOSE LAREDO APARICIO STREET N°1

causing this party a clear DEFENSE, by virtue of what is established in the

art. 24 of the Spanish Constitution”.

“That, considering it presented by this writing, it serves to admit it, and

conformity with the same, the annulment of the act proceeds and that the

actions to the date of the alleged infraction committed for not following the

legally established procedure, granting a term to this party for the presentation of allegations and to proceed to the identification of the driver”.

SEVENTH: On 09/23/19 a "Resolution proposal" is formulated against the entity Nagasaki Cafeteria, proposing a penalty of €1,500 (One thousand five hundred Euros) for the disproportionately obtaining images of the public sidewalk, as it is accredited infringement of art. 5.1 c) GDPR.

: Of the actions carried out, the following have been accredited

EIGHTH

proven facts:

First. On 09/19/18, this Agency received a claim from the complainant, by means of which the main fact is transferred:

“placement of cameras outside the Nagasaki establishment obtaining images of public space” (folio nº 1).

Second. The establishment is identified as the main responsible Nagasaki coffee shop (reported).

Third. The reported establishment acknowledges having a system of video-surveillance cameras composed of four cameras for “security” reasons against various attacks produced.

Fourth. The establishment has the mandatory information poster in the area visible, although it cannot be verified that it adapts to the regulations in force, given the distance of the photograph taken.

Fifth. The collection of public sidewalks is accredited, in such a way that obtain images of pedestrians and vehicles parked in the nearby area to the establishment.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of the RGPD recognizes to each authority of control, it is competent to initiate this procedure the Director of the Agency Spanish Data Protection Agency, in accordance with article 12.2, sections i) and j) of Royal Decree 428/1993, of March 26, approving the Statute of the C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/7

Data Protection Agency (hereinafter, RD 428/1993).

II

Before going into the substance of the matter, it is necessary to analyze the request for "annulment" of the actions put forward by the accused party, considering the same that It has produced "a clear defenselessness."

To the above, it should be clarified that you cannot claim ignorance of the "facts", since they are enclosed in quotation marks in the Start agreement, installation of a video-surveillance camera system in the establishment Nagasaki Cafeteria, with "orientation towards public space".

Due to these allegations, the accused party does not provide any documentary evidence in relation to the denounced video-surveillance system, This being the first time you request a copy of the documentation in the proceedings.

So given the clarity of the "facts" object of imputation, as well as the transfer of the claim had previously occurred (08/10/18) to effects of arguing about it, one cannot speak of defenselessness by ignorance of the facts.

The defendant cannot "complain of any defenselessness because he has had, in at all times, the possibility of fully asserting their rights.", being able to make the appropriate allegations and provide all the necessary documentation to verify the legality of the installed system.

In accordance with the foregoing, neither his right nor the presumption of innocence, nor the right to defense, before the facts object of imputation, which is why it is appropriate to dismiss his claim, continuing the processing of the procedure for the appropriate legal purposes.

III

In the present case, we proceed to examine the claim dated 09/19/18 by means of which the following is transferred as the main fact:

“placement of cameras outside the Nagasaki establishment obtaining images of public space” (folio nº 1).

The "facts" described above imply an affectation of the content of the art. 5.1 c) RGPD, by having video-surveillance cameras that obtain images of the sidewalk, affecting the right of passers-by who walk freely along the zone.

“Personal data will be: adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed (“data minimization”).

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/7

The treatment of images in public places can only be carried out -in your case and prior compliance with the legally enforceable requirements-, by the Forces and

Security Forces, unless the exception established in article 4.3 operates of Instruction 1/2006, of November 8, of this Agency, which establishes: "the cameras and video cameras installed in private spaces will not be able to obtain images of public spaces unless it is essential for the purpose of surveillance that is intended, or is impossible to avoid because of the location of those. In any case, any unnecessary data processing should be avoided. for the intended purpose".

In no case will the use of surveillance practices be admitted beyond the environment object of the installation and in particular, not being able to affect the spaces surrounding public, adjoining buildings and vehicles other than those accessing the guarded space.

IV

The Supreme Court (Judgments of July 5, 1998 and March 2, 1999) comes understanding that recklessness exists whenever a legal duty of care is disregarded. care, that is, when the offending subject does not behave with the required diligence. Diligence whose degree of demand will be determined in accordance with the circumstances concurrent in each case, such as the special value of the protected legal interest or the professionalism required of the offender. In this sense, the aforementioned Judgment of June 5 of 1998 requires professionals in the sector "a duty to know especially the applicable rules".

Applying the previous doctrine, the National High Court requires the entities that operate special diligence in the data market when carrying out the use or treatment of such data or transfer to third parties. And this because being the one of the data protection a fundamental right (Judgment of the Constitutional Court 292/2000), the repositories of these data must be especially diligent and careful when operating with them and should always opt for the interpretation

more favorable to the protection of the legal rights protected by the norm. In this sense, among others, Judgments of the National High Court dated February 14 and 20 September 2002 and April 13 and May 18, 2005).

The mere commission of an administrative infraction—objective type—is not enough to time to proceed to impose an administrative sanction.

Guilt as reproach to the active subject of the injury of the legal interest protected, is evident when the subject voluntarily performs the typical behavior intentionally directed to obtaining the unlawful result, which is sought and

Dear

There must therefore be willful or negligent conduct, whether gross negligence or mild or simple, depending on the degree of neglect. And there is no negligence, nor therefore guilty and punishable infraction, "when the necessary diligence has been put into the compliance with the obligations required in terms of LOPD".

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/7

v

In accordance with the evidence available in this proceeding sanctioning party, it is considered that the defendant has an external camera that obtain images of the public sidewalk and adjoining space without just cause and of disproportionate way.

With this device, images are obtained of the public sidewalk adjoining its establishment disproportionately, existing less harmful means to the rights of pedestrians and having been able to reorient the outer camera

exclusively to your private property.

The known facts could constitute an infraction, attributable to the claimed, for violation of art. 5.1 c) previously transcribed.

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

a)

the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

The installed camera disproportionately captures public space, so that there are less harmful means to the rights of third parties to install the same.

When motivating the sanction, it is taken into account that it is a small cafeteria, with volume of income not high for this type of establishments, which has been affected by various "attacks" on the same obeying the installation for a legitimate purpose such as its protection.

-Through it, images of passers-by are obtained on the public sidewalk without just cause, since the same purpose is achieved with a exclusive orientation towards the facade of the premises to be protected (art. 83.2 a) RGPD).

-It should have been foreseen after the complaint filed, that the camera was wrong oriented, so the conduct is considered negligent to a slight degree (art. 83.2 b) GDPR).

Therefore, it is appropriate to order the imposition of a sanction located on the lowest scale for this type of infringement for the reasons stated, valuing the collaboration

with this body of the accused, encrypting the same in the amount of

€1,500 (One thousand five hundred Euros).

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/7

All this without prejudice to proceeding to reorient the camera in a matter of

so that it is oriented preferably towards the façade or is relocated to

comply with its purpose, but respecting the affected rights.

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the entity denounced CAFETERÍA NAGASAKI, with NIF

B74274168, for an infringement of Article 5.1.c) of the RGPD, typified in Article

83.5 of the RGPD, a fine of €1,500 (one thousand five hundred Euros), in accordance with the

established in art. 58.2 GDPR.

SECOND: ORDER the reorientation of the exterior camera towards the exclusive area

of your private property (facade of the establishment), accrediting such end to

this Agency through irrefutable evidence in this regard.

THIRD: NOTIFY this resolution to the entity CAFETERÍA NAGASAKI

and REPORT the result of the actions to the denouncing party A.A.A.

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

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 Data Protection at Banco CAIXABANK, S.A. 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 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.

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

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

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->

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es