

□ Procedure No.: PS/00373/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The claim filed by A.A.A., B.B.B., C.C.C. (hereinafter, the
claimants) has entry dated May 7, 2019 in the Spanish Agency of
Data Protection.

The claim is directed against D.D.D., with NIF ***NIF.1 (hereinafter, the claimed one).

The reasons on which the claim is based are that on October 25, 2018 the
CALZEDONIA located in Calle

affected visited the commercial establishment

***ADDRESS.1 run by the claimed party, producing the recording of the
themselves by the establishment through the security cameras that there
are installed, without the slightest indication in this regard.

That the graphic images have been transmitted partially and with interest and
disclosed so much in social networks in which it was posted as an annex
photographs of the daughter of one of those affected together with her minor grandson, as
via WhatsApp in a massive way.

That the processing of personal data in which those affected are
totally identifiable has been illegal, since the images are exposed and disseminated
of their person and sounds of their voices publicly and without their consent,
seriously attacking their personal and family privacy, honor and own image,
being responsible for the file and its treatment the denounced.

That by burofax dated December 26, 2018, the injured parties

they exercised the right of opposition provided for in article 34 of Royal Decree 1720/2007,
of December 21.

And, among other things, attach the following documentation:

- o Copy of DNIs of those affected.

- o Copy of the power of attorney with the title "power of attorney for lawsuits".

- o Screenshot of the facebook.com website where the profile with name appears

E.E.E. and in which there is a video whose image coincides with that of one of the videos
provided by the complainant.

- o Copy of photograph showing a woman and two children.

- o Copy of proof of sending burofax dated January 8, 2019 being

sender D.A.A.A. and being the addressee the one denounced, with among others the
following manifestations:

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2/10

- o Who exercises the right of opposition. That those responsible for the file
they must destroy the images, also taking appropriate measures to
cease its disclosure.

- o That the processing of personal data in which the
appearing party is fully identifiable has been illegal insofar as
expose and disseminate the images of their person and the sounds of their voice
publicly and without your consent.

Attach a copy of your ID.

either

A copy of the proof of delivery of the burofax is attached to the person reported on the 9th of January 2019.

oCopy of proof of sending burofax dated January 8, 2019 being sender D.C.C.C. and being the addressee the one denounced, with among others the following manifestations:

o Who exercises the right of opposition. That those responsible for the file they must destroy the images, also taking appropriate measures to cease its disclosure.

o That the processing of personal data in which the appearing party is fully identifiable has been illegal insofar as expose and disseminate the images of their person and the sounds of their voice publicly and without your consent.

Attach a copy of your ID.

either

A copy of the proof of delivery of the burofax is attached to the person reported on the 9th of January 2019.

oCopy of proof of sending burofax on December 28, 2018 being sender D.B.B.B. and being the addressee the one denounced, with among others the following manifestations:

o Who exercises the right of opposition. That those responsible for the file they must destroy the images, also taking appropriate measures to cease its disclosure.

o That the processing of personal data in which the appearing party is fully identifiable has been illegal insofar as expose and disseminate the images of their person and the sounds of their voice publicly and without your consent.

Attach a copy of your ID.

either

Attached is a copy of the supporting document dated January 2, 2019 with the result of "No delivered by unknown" in relation to the burofax sent on December 28 from 2018 to the reported.

A copy of the proof of delivery dated January 9, 2019 from burofax is attached. sent to the defendant dated January 8, 2019.

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 www.aepd.es

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3/10

hereinafter LOPDGDD), dated June 21, 2020, within the procedure of admission E/05758/2019, this claim is transferred without got response.

THIRD: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts of the claim, having knowledge of the following extremes:

On September 25, 2019, the respondent sends this Agency the following information and demonstrations:

1. That on February 12, 2018, the entity SECURITAS DIRECT, S.A.U.

proceeded to the installation of the video surveillance system in the commercial establishment "CALZEDONIA" located in the street *** ADDRESS.1 business run by the reported.

Document of registration of the file in the General Register of Protection of

Data dated 03/03/2014 where the name of the accused is stated and how

“File Name”, “Video Surveillance”.

Electronic contracting certificate dated February 12, 2018 is provided

where SECURITAS DIRECT, S.A.U. and F.F.F.

two

That it complies with the duty of information according to the distinctive located in the

interior area of the establishment in a place that is sufficiently visible to

users.

☐

That said badge includes the data of:

Identity of the person in charge

☐

☐ Address at which rights can be exercised

☐ More information on the processing of personal data.

A photograph of the poster is provided.

3 -That the camera is a CLOUD CAM PRO model.

SECURITAS DIRECT invoice is provided in the name of LUCENTUM EXPORT

IMPORT, S.L. where it consists:

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☐

“Installation date”: 02/12/2018

“Address”: STREET ***ADDRESS.1

A user guide for the camera is provided, which includes:

a.

a.

b.

“Start “My Verisure” application

Enter your user ID and password”

That the camera has a memory card slot

SD.

“Types of recordings.

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4/10

Video request.

Video saved in the cloud by recording request

Handbook.

Audio detection.

Video saved in the cloud by automatic recording when

detect the camera a sound.

...”

c.

“Video Download.

You can download the videos to your mobile phone by pressing the
icon.

During the process you will have the option to share the video on
social media, email, etc.

d.

"Memory card

Use an SD card.

The video will be automatically saved to the SD card.”

4 -That the security camera is installed in the upper part of the counter or cashier area.

Photographs are provided.

5 -That the image captured by the camera of the commercial establishment is limited exclusively to the inner area of the same.

Photography is provided.

6. -That the person responsible for the file has not proceeded to disseminate the images that denounce captured on 10/25/2018 in social networks and via WhatsApp.

7 - That at all times the necessary measures have been adopted to guarantee the processing of personal data, public liberties and rights fundamentals of natural persons.

8 -That due to the events that occurred on October 25, 2018, they led to a judicial proceeding before the Court of First Instance and Instruction number 2 of ***LOCALIDAD.1 where two of the three complainants were convicted.

Provides a copy of judgment number 35/2018 of the Court of First Instance and Instruction number 2 of ***LOCATION.1

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5/10

9 -Which proceeded to provide the recording of October 25, 2018 in the procedure outlined within the duty of collaboration with the Administration of

Justice.

10 -That they cannot provide a report on the measures adopted to prevent the produce similar incidents because they deny that an incident has occurred due to its part, beyond the collaboration with the Administration of Justice.

On July 1, 2020, G.G.G. acting on behalf of those affected in

By virtue of a power of attorney granted before a Notary, send this Agency the following information and manifestations:

1.

That the video was published on November 14, 2018.

“As for the photograph of the daughter of one of those affected, it is published in one

1.

of the threads opened by spreading the video on Facebook, with the same date before expressed or the day immediately following. The photograph used is captured at his instead of the Facebook profile of the person who appears in the photograph. Today it is makes it impossible to determine who publishes the photograph because the threads of the conversations were eliminated as a result of the undersigned lawyer putting

I manifest the illegality of the action of both the publisher and the share.”

That the accused “...is the person responsible for the file, since the two.

Disseminated images are recorded in the business premises that he runs. In fact recognizes in his statement in the framework of the Light Trial 12/2019 of the Court of Instruction no. 2 of *** LOCATION.1, whose recording we make available to you if they estimate it to be precise: “...this is getting out of hand due to a security issue, but that is a trial apart from this trial. That has come out on the networks, all that is true ””

“Doña H.H.H., of legal age, with ID number

3.

***NIF.1 and address at Calle ***ADDRESS.2. Mrs. H.H.H. is a worker for account of the previous one in the Calzedonia establishment and he is the one who claims to have the video and voice recordings on your mobile terminal, according to your statement given in the attested ***ATESTADO.1 at the National Police Station ***LOCATION.1 that Attached".

Provides a copy of the last page of report 4353/18 of the National Police Corps where it is stated "That the complainant has in her possession the recording of the cameras of video surveillance of the store, which also has audio, where everything is reflected occurred, which will be shown before the Judicial Authority when required for your viewing." There is also a handwritten signature with the name H.H.H. What about the dissemination of the video by the WhatsApp application who Four.

initially disseminated through this channel are the defendant and Doña H.H.H. On June 4, 2020, a request for information is sent to the respondent. The notification is made by postal mail. The letter is returned by the Service of Posts with the annotation "Returned to Origin by Unknown".

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6/10

On August 31, 2020, a request for information is sent to FACEBOOK IRELAND LIMITED in order to know data of the person who has uploaded the video on social networks. Notification is made by certificate international. To date, no response has been received to the notification.

On September 7, 2020, the State Tax Administration Agency

sends the tax address of the accused to this Agency.

On September 7, 2020, a request for information is sent to the

claimed. The notification is made by postal mail. no reply received

FOURTH: On October 19, 2020, 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.

FIFTH: On November 12, 2020, the agreement to start this

procedure, through a single edictal board, becoming the same in a proposal for

resolution in accordance with articles 64.2.f) and 85 of Law 39/2015, of 1

October, of the Common Administrative Procedure of the Public Administrations

(LPACAP), as allegations were not made within the indicated period.

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

of Data in this procedure the following are considered proven facts,

FACTS

FIRST: The CALZEDONIA commercial establishment located on Calle *** ADDRESS.1

run by the defendant, has proceeded to record the image and voice of the

claimants through the security cameras that are installed there, and has

disclosed on social media.

SECOND: The respondent states that it is a security camera that is

It is installed in the upper part of the counter or cashier area

THIRD: On November 12, 2020, the agreement to start the

this procedure, becoming the same in resolution proposal of

in accordance with articles 64.2.f) and 85 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (LPACAP), to the

not make allegations within the indicated period.

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 arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

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7/10

II

For informational purposes only, it is worth remembering some of the requirements that must be comply with the processing of images through a video surveillance system to be in accordance with current regulations:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, it can only be installed by a private security company that meets the requirements contemplated in article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of people who are outside the private space since the treatment of images in public places only it can be carried out, where appropriate, by the Security Forces and Bodies. Either spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, of the people who are in them.
- The duty to inform those affected provided for in article 12 of the

RGPD 2016/679, of April 27, 2016, in the terms referred to both in the aforementioned article, as in articles 13 and 14 of said norm, resulting from application -by not contradict the provisions of the aforementioned Regulation-, the manner provided in article 3 of Instruction 1/2006, of November 8, of the Spanish Protection Agency of Data, on the Processing of Personal Data for Surveillance Purposes through Camera or Video Camera Systems (Instruction 1/2006, of November 8, of the Spanish Data Protection Agency).

Specifically, it must:

Place in the video-monitored areas, at least one informative badge located

1.

located in a sufficiently visible place, both in open and closed spaces.

In accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679, of April 27, 2016, in the aforementioned informative sign

At least, the existence of a treatment, the identity of the

responsible and the possibility of exercising the rights provided for in said precepts.

Keep the information to which it refers available to those affected.

two.

the aforementioned Regulation (EU) 2016/679, of April 27, 2016.

On the other hand, it should be noted that article 5 section 1 letter c) RGPD "Principles regarding treatment" provides that personal data will be processed:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which who are treated". (data minimization).

III

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In accordance with the available evidence, it is considered that the claimed has violated article 5.1 c) of the RGD, since it has recorded the image and voice of the claimants, in a commercial establishment of CALZEDONIA located in Street *** ADDRESS.1 managed by the claimed, through the cameras of security installed there, thereby contravening the principle of data minimization, which requires that they be adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed, understanding that the recording of the voice in addition to the image as security measures clearly contradict said beginning.

Secondly, it is also stated that the images that are the object of this case have been uploaded to different internet pages, without the consent of those claimed.

In this regard, it should be noted that despite the investigative actions carried out by the Spanish Data Protection Agency, it has not been possible find out who is the author of such facts.

IV

Article 83.5 a) of the RGD, considers that the infringement of “the basic principles for processing, including the conditions for consent under the articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned Article 83 of the aforementioned Regulation, with administrative fines of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount.

By virtue of the provisions of article 58.2 RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers, among which is the power to impose fines, in the event of an infringement of the provisions of the RGPD.

Article 58 section 2 GDPR provides the following:

“Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation;

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;

The accused party is reminded that the installed cameras cannot record the voice of customers by affecting without just cause the right to privacy of third parties

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9/10

without legitimacy and not being any of the cases allowed by the regulations in force, and in case of non-collaboration with this body, it may be considered a hindering attitude, as an element to assess in order to a sanction of nature economic, which is communicated to the appropriate legal effects.

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 D.D.D., with NIF ***NIF.1, for an infraction of article 5.1.c)

of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

SECOND: TO REQUIRE the claimed party so that within one month they certify

before this body compliance with the adoption of technical measures or

appropriate organizational structures accrediting the proper use of security cameras

of its establishment in accordance with current regulations, but without recording the voice

of your customers.

THIRD: NOTIFY this resolution to DDD.

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-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.

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Sea Spain Marti

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