

□ File No.: EXP202100276

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 07/03/2021, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter the part
claimant), through which he makes a claim against IMPERIUM C.B. with NIF
E73710246 (hereinafter, the claimed party), for a possible breach of the
provided in the data protection regulations.

The claim states the following, in relation to the matter of protection
of personal data:

"The reason for this is to inform you and report to exercise my rights
before you. About the irregularity that currently has a place called
IMPERIUM PUB LIBERAL, with address...

In this place there are currently three cameras which record all customers
who appear in said premises, there is NO authorized poster or announcer in the
where these three cameras are noticed, nor where customers can exercise their
Rights.

[...]"

Attach the following documents to the claim:

- A photocopy of the claimant's DNI.
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Three photos showing the existence of three video surveillance cameras in
some facilities.

SECOND: Prior to admitting this claim for processing, the

The Agency transferred it to the person claimed on 07/08/2021, in accordance with

the provisions of article 65.4 of Organic Law 3/2018, of December 5, of

Protection of Personal Data and guarantee of digital rights (hereinafter,

LOPDGDD). There was a first notification attempt through the Service of

Electronic Notifications, being rejected on 07/19//2021 once

after the established period of ten days. However, on 07/30//2021 the

claimed received notification by mail, as stated in the Notice of

Receipt issued by the Post Office, without any reply having been received.

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THIRD: On 09/27/2021, the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 10/29/2021, the Director of the Spanish Protection Agency

of Data 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 RGPD.

FIFTH: In compliance with the provision of article 14.2 of Law 39/2015, of 1

October, of the Common Administrative Procedure of the Public Administrations (in

hereinafter, LPACAP) the agreement to open the proceeding was notified to the respondent

by electronic means.

The certificate issued by the Electronic Notification Service Support service

and Authorized Electronic address of the National Currency and Stamp Factory (in

forward, FNMT), which is in the file, proves that the AEPD put the notification

available to the recipient on 11/02/2021 and that on 11/13/2021

produced the automatic rejection of the notification.

Article 43.2, second paragraph, of the LPACAP establishes that "When the notification by electronic means is mandatory, or has been expressly chosen by the interested party, it will be understood as rejected when ten days have elapsed natural since the notification is made available without accessing its contents".

In turn, article 41.5 of the LPACAP specifies that "When the interested party or his representative rejects the notification of an administrative action, it shall be recorded in the file, specifying the circumstances of the notification attempt and the medium, considering the procedure completed and following the procedure".

SIXTH: After the term granted for the formulation of allegations to the agreement of the beginning of the procedure, it has been verified that no allegation has been received by the claimed party.

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- establishes that if allegations are not made within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal.

In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the party complained against has made no objections to the agreement to initiate the file and In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

SEVENTH: The agreement to initiate the procedure agreed in the third point of the part
dispositive "INCORPORATE to the disciplinary file, for the purposes of evidence, the
claims submitted by claimants and the information and documentation

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obtained by the Subdirector General for Data Inspection in the phase of
information prior to the agreement for admission to processing of the claim".

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: A claim is filed against IMPERIUM C.B. for having installed a
video surveillance system in your establishment without signaling through the relevant
informative posters of video-surveillance area.

SECOND: The Spanish Data Protection Agency has notified the respondent
the agreement to initiate this sanctioning procedure, but this has not
presented allegations or evidence that contradicts the facts denounced.

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.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the

Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, when they do not contradict them, with a subsidiary, by the general rules on administrative procedures.

II

In accordance with the definition of "personal data" offered by article 4.1 of the RGPD, the image of a natural person is personal data. Thus, in accordance with the article 1.2 of the RGPD, the image of a natural person and its protection is subject to said Regulation.

Article 12.1 of the RGPD states that: "1. The data controller will take the appropriate measures to provide the interested party with all the information indicated in the articles 13 and 14". In this sense, section 7 of the aforementioned precept indicates that: "The information to be provided to data subjects under Articles 13 and 14 may be processed in combination with standardized icons that allow to provide in an easily visible, intelligible, and clearly legible manner an adequate vision of set of planned treatment.

In parallel, article 22 of the LOPDGDD includes the specific rules for the data processing for video surveillance purposes and states the following:

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"1. Natural or legal persons, public or private, may carry out the treatment of images through camera systems or video cameras with the purpose to preserve the safety of people and property, as well as its facilities.

2. Images of public roads may only be captured to the extent that it is indispensable for the purpose mentioned in the previous section.

However, it will be possible to capture public roads to a greater extent when necessary to guarantee the security of assets or strategic installations. services or infrastructures linked to transport, without in any case being able to put the capturing of images of the interior of a private home.

3. The data will be deleted within a maximum period of one month from its collection, except when they had to be kept to prove the commission of acts that attend to have against the integrity of people, goods or facilities. In this case, the images must be made available to the competent authority within a maximum period of seventy-two hours since the existence of the recording became known. tion.

The blocking obligation provided for in art. article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood to be fulfilled by placing an informative device in a sufficient place ciently visible 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 articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the device information I attach a connection code or internet address to this information.

In any case, the person in charge of the treatment must keep available to the affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded of its scope of application the treatment by a natural person of images that are regrettably capture the interior of your own home.

This exclusion does not cover processing carried out by a private security entity.

given that she had been hired to guard a home and had access to the images.

6. The processing of personal data from the images and sounds obtained nests through the use of cameras and video cameras by the Forces and Corps Security and by the competent bodies for surveillance and control in the centers penitentiaries and for the control, regulation, surveillance and discipline of traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment for purposes of prevention, investigation, detection or prosecution of violations criminal offenses or the execution of criminal sanctions, including protection and prevention against threats to public safety. Apart from these assumptions, said treatment will be governed by its specific legislation and additionally by the Regulations to (EU) 2016/679 and this organic law.

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7. What is regulated in this article is understood without prejudice to the provisions of the Law 5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through camera systems cameras or video cameras is subject to the provisions of article 89 of this organic law.

In order for the data controller to comply with the obligation imposed by the article 12 of the RGPD, article 22 of the LOPDGDD requires that, at least, the existence treatment, the identity of the person in charge and the possibility of exercising the rights rights provided for in articles 15 to 22 of the RGPD, is contained in a device whose design and location must be such that the affected party has a clear view of the information

information available on the processing of your personal data and on where and how find the detailed information. However, it should be noted that the rest of the questions contemplated in article 13 of the RGPD “must be kept available to those affected”, that is, in a place that can be easily accessed by the interested party. In accordance with article 13 of the RGPD, the information that must be provided by the responsible for the treatment when the personal data is obtained from the interested party is the next:

"1. When personal data relating to him is obtained from an interested party, the person in charge treatment at the time these are obtained, will provide you with all the information information indicated below:

a) The identity and contact details of the person in charge and, where appropriate, of their representative. presenter;

b)

c)

the contact details of the data protection officer, if any;

the purposes of the treatment to which the personal data is destined and the legal basis ca of treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;

and)

the recipients or categories of recipients of the personal data, in

Their 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 adequacy assessment by the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference

lack of adequate or appropriate safeguards and means of obtaining

a copy of these or the fact that they have been loaned.

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

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a) the period during which the personal data will be kept or, when it is 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 ar-

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

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

in 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

not to 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, inform significant information about applied logic, as well as the importance and con-planned sequences of said treatment for the interested party.

3. When the data controller plans further data processing

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.”

III

In accordance with the foregoing, the processing of images through a system of video surveillance, to be in accordance with current regulations, must comply with the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, you 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 4 april.

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Camcorders will not be able to capture images of people are outside the private space where the security system is installed. video surveillance, since the processing of images in public places only can be carried out, unless there is government authorization, by the

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Security Forces and Bodies. They cannot be captured or recorded spaces owned by third parties without the consent of their owners, or, in their case, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed in facades or inside, it may be necessary to guarantee the purpose of security recording a portion of the public highway. That is, the cameras and video cameras installed for security purposes will not be able to obtain images of public roads unless it is essential for that purpose, or it is impossible to avoid due to their location and extraordinarily

The minimum space for said purpose will also be collected. Therefore, the cameras could exceptionally capture the minimally necessary portion for its intended security purpose.

- The duty to inform those affected provided for in articles 12 and 13 of the RGPD and 22.4 of the LOPDGDD.
- The person in charge must keep a record of treatment activities carried out under their responsibility, including the information to which refers to article 30.1 of the RGPD.

-

The installed cameras cannot obtain images of private spaces.

third party and/or public space without duly accredited justified cause, or

may affect the privacy of passers-by who move freely through the zone. It is not allowed, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without just cause.

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

In relation to the foregoing, to facilitate the consultation of interested parties, the Agency

Spanish Data Protection offers through its website

[<https://www.aepd.es>] access to data protection legislation

including the RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”), to the Guide on the use of video cameras for security and other purposes and the Guide for compliance with the duty to inform (both available in the “Guides and tools” section).

It is also of interest in the event that low-level data processing is carried out.

risk, the free tool Facilita (in the “Guides and tools” section) that,

through specific questions, it allows to assess the situation of the person in charge

regarding the processing of personal data that it carries out and, where appropriate, generate

various documents, informative and contractual clauses, as well as an annex with

indicative security measures considered minimal.

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In the present case, the respondent has not presented arguments or evidence that contradict the facts denounced within the period given for it.

In accordance with the evidence available and which has not been distorted during the sanctioning procedure, the defendant does not have a cartel informative of the existence of a video surveillance system in your establishment, Therefore, it is considered that these facts violate the provisions of article 13 of the RGPD, indicated in the foundation of law II.

Thus, in accordance with the exposed facts, we find ourselves before a infringement of the provisions of article 13 of the RGPD, by the claimed party. Of In this way, the conduct of the defendant violates the obligation imposed by article 13 of the RGPD, so such conduct could constitute an infringement typified in article 83.5 b) of the RGPD, a precept that establishes: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to 4% of the total global annual turnover of the previous financial year, opting for the highest amount:

a)

(...)

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

(...)

For the mere purposes of prescription, article 72.1.h) of the LOPDGDD qualifies as very serious "The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law". The limitation period for offenses very serious cases provided for in Organic Law 3/2018 is three years.

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among them they find the power to direct a warning (art. 58.2 b)), the power to impose an administrative fine in accordance with article 83 of the RGPD (art. 58.2 i)), or the power to order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the RGPD, where appropriate, in a certain way and within a specified period (art. 58.2 d)).

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with article 83.1 of the RGPD. In order to determine the fine to be imposed, the provisions of article 83.2 of the GDPR, which indicates:

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"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 the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question as well

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to

alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment,

taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

measure;

i) when the measures indicated in article 58, section 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms of

certification approved in accordance with article 42,

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement.

For its part, in relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in

its article 76, "Sanctions and corrective measures", provides:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation

(EU) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

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may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of personal information.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when not mandatory, a data protection officer.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party".

In accordance with the precepts transcribed, in order to set the amount of the sanction of fine to be imposed in the present case for the infraction typified in article 83.5 b)

of the RGPD, it is appropriate to grade it according to the following aggravating criteria:

- The nature of the offence. The one claimed, due to the lack of an information poster, produces

damages to all affected stakeholders who do not know who the

responsible for the treatment and to whom they must be addressed in order to exercise the rights recognized in the RGPD.

- The way in which the control authority became aware of the infraction. The shape in which the AEPD has been aware has been through the presentation of a claim by the claimant.

- The degree of cooperation with the AEPD in order to remedy the infringement.

After having notified the claim and, subsequently, the opening agreement, to the claimed in order to be able to answer and, where appropriate, take measures to avoid the infringement, the AEPD has not received any response.

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of article 13, allows a fine of 1,500 euros (one thousand five hundred euros).

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

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the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE IMPERIUM C.B., with NIF E73710246, for an infraction of the article 13 of the RGPD, typified in article 83.5 of the RGPD, a fine of €1,500 (one thousand five hundred euros).

SECOND: ORDER IMPERIUM C.B., with NIF E73710246, which, by virtue of article 58.2 d) of the RGPD, within ten days, adopt the following measures:

- Prove that you have proceeded to place the informative device in the video-monitored areas or to complete the information offered therein (you must identify, at least, the existence of a treatment, the identity of the responsible and the possibility of exercising the rights provided for in said precepts), locating this device in a sufficiently visible place, both in open and closed spaces.

- Prove that you keep the information to which it refers available to those affected.
refers to the aforementioned RGPD.

THIRD: NOTIFY this resolution to IMPERIUM C.B.

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

Otherwise, it will be collected in 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 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

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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-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](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

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