

□ Procedure No.: PS/00261/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

A.A.A.

(hereinafter, the claimant) dated 01/07/2020

### FIRST:

interposed

claim before the Spanish Agency for Data Protection against RADIOTELEVISIÓN OF THE PRINCIPALITY OF ASTURIAS, (RTPA hereinafter) with NIF A33924606 (in later, the claimed one). The grounds on which the claim is based are that preserved some images captured in February 2017, in the workplace, giving them to the Court more than a year later.

Along with the claim, provide:

-Writ of 12/29/2017 from the Lawyer of B.B.B., a person employed at the headquarters of the claimed, addressed to the claimed, indicating that "during the year 2017 they have hung and pasted posters at the headquarters of that television with insulting content" to that person and other members of the company, indicating that it may constitute a criminal offense" and makes a "request to proceed to locate the recordings of the 10 days to February 15 and December 3 to 10 of this year, the author or authors of said acts illicit, that is to say to those who stuck or hung them on the boards and walls and even on the depositary of intimate hygiene of the women's bathroom "" before the imminent exercise of actions criminal and labor on our part."

-Response from the respondent, dated 01/30/2018, indicating that by virtue of the

Data Protection regulations, "we cannot provide the information you request, adding that there is no legitimizing basis for it, concluding that said recordings could be provided if required by the judicial or police authority timely."

-Complaint before the Police, dated 03/03/2018, by B.B.B. of facts occurred at the headquarters of the defendant, stating that she is the object of "insults and harassment by part of a worker, (...), appointed by (...)", and denounces a series of damages, as well as the exhibition of "some images on the social network, on the Facebook page \*\*\*PÁGINA.1, on \*\*\*DATE.1, with comments such as "The new managers finger-picking..." and that "in said pages receives insults". He adds that "he receives insults in images written on stickers placed in common work areas, access doors, bathroom doors, walls, in the female restrooms and at home."

- Copy of demand to the Court by representative of B.B.B. for the crime of harassment inside and outside the workplace and insults, against the claimant, dated 03/18/2018. In one of the requests appears to RTPA "copy of the recordings requested in our letter".

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- Letter from the Police addressed to the Investigating Court 4 of Gijón, reference preliminary proceedings, abbreviated procedure XXX/2018 of \*\*\*DATE.2, matter "giving account of managements entrusted in writing of your reference", and it is indicated: "in reply to your reference letter in which you request the viewing, analysis and report about the recordings obtained by the RTPA recording video cameras

provided to this group by means of a DVD disc and referring to the facts of which it understands

that Court, the following is involved:

☐ There are three avi extension files on the DVD disc, called 213. sticker

two, 213 sticker MP 4 and 213 sticker 3. All three, on the same day, \*\*\*DATE.3.

☐ In file 213 sticker two, "you can see that the filming starts at

7:05, and in it you can see a bearded individual in a dark jacket wearing

a backpack on his back to access the place where there are two machines of

vending machine and a bulletin board and how he himself separates two pieces of paper by throwing one

of them in the wastebasket that is in the place and sticking the other one on the bulletin board.

announcements being evident that it is a sticker ending the filming at

7:06."

☐ In the MP 4 sticker file, filming starts at 7:21, on \*\*\*DATE.3

"and as the same individual accesses another area where there is a plank of

advertisements and as soon as you enter, it begins to remove the paper that covers the adhesive of

a sticker by throwing the same in the bin and it goes to the board with the sticker

hitting the same, being at that moment when an individual arrives at the place who

see the facts and comment something with the alleged perpetrator..."

☐ In file 213 sticker 3, "filming starts at 8:37 28. It looks

again to the same individual referenced above how you access

back to the area where the two vending machines and the bulletin board are located.

advertisements and how he again places another sticker on said board where there was already

put another one, although on this occasion he pastes it over another existing document in

the board ending said recording at 8:38. "

"Collated the images indicated above with the images in the

☐

databases of the General Directorate of the Police, in this case the DNI of the

denounced" indicating the name and surnames of the claimant, "the characteristics

The physical characteristics are very coincidental, and it may be that person."

- Respondent's response, dated 04/24/2018, to the Investigating Court 4

Gijón, abbreviated procedure XXX/2018. In said letter, he sends you "a copy of the

recordings of the day \*\*\*DATE.3. Recordings from 12/3 to 10/12/2017 cannot

contribute because they are not available".

-Writing from the claimant, addressed to the respondent on 11/8/2019, stating the

conservation in time of the recordings of February 2017, asks them to explain the

reasons, considering that an "irregular treatment" has been carried out and requesting "access to

the information about the treatment of the images that the RTPA registers and preserves and

about the treatment of my data".

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1.

SECOND: In view of the facts and the documents provided by the claimant, to the

claimed on 03/05/2020, a copy of the claim is sent through the AEPD, so that

would send:

The decision adopted purpose of this claim.

In its response dated 06/30/2020, it states with respect to the claimant's brief of

11/8/2019, which was answered on 01/8/2020.

It indicates that at the time the request for information is made by the authorities,

the obligation to delete personal data from its collection was not in force

that introduces the Organic Law 3/2018, of 5/12, on the Protection of Personal Data and

guarantee of digital rights (hereinafter LOPDGDD) and that "article 22.3 of the

LOPDGDD that includes the previous obligation, allows its conservation to prove the

commission of acts that threaten the integrity of persons, goods or facilities".

Provides document 1 (folio 61) in which "in relation to the query" he was answered indi-

telling him that the obligation to preserve images was in accordance with the LOPD and that the images

were handed over to the judicial authority.

They indicate a link to the site where you can consult the privacy policy.

1. In the event of exercising rights, accreditation of the response provided to the request.

claimant.

This question is not answered

Report on the causes that have motivated the incidence that has originated the claim.

two.

mation.

It states that on 03/26/2018 there was a request from the Court of Instruction 4 of Gi-

jón, procedure XXX/2018 requesting the claimed delivery of recordings of the days

10 to 15/02 and 3 to 10/12/2017, repeated on 05/25/2018.

By letter of 04/24/2018, they sent a copy of the recordings of the day \*\*\*DATE.3,

but due to a technical problem for which the images could not be displayed, so

that in a second request of 05/25/2018 it was sent to the court on the same date

the documentation.

Provides document 2, which contains what has been expressed.

3.

Report on the measures adopted to prevent similar incidents from occurring.

lares, Date of implementation and controls carried out to verify its effectiveness.

Reiterates (folio 61), that at the time the request for information was made by the

authorities was not in force the obligation to delete personal data from

its collection, being the provision that establishes it, the LOPDGDD in its article 22.3.

4. If the matter is related to video surveillance, a series of questions are requested on the implanted system.

In its fourth point, it provides information on the video surveillance system.

Document 4 contains the accreditation that "they have notified their workers about existence of a video-monitored zone, as well as informative posters of its location". In the photo, which does not have a date on which it was obtained, is seen inside a building, a sign of

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video surveillance zone notice with the reference to the LOPD of 1999, indicating the headquarters before the to exercise rights (91).

It indicates that the purpose "is to guarantee the safety of people, goods and installations. nes", the system "does not record places of rest for workers, nor is it disproportionate with the end pursued."

He states that they have 16 analog security cameras with composite video that are centralizes in two recording systems. It does not indicate the distribution that corresponds to the space outside and how many inside. "The interior cameras of the fixed building and the exterior ones have They have the ability to move but they are not operational."

As document 5, they provide screenshots of the areas recorded by each video camera. camera, without explaining the correlation of each camera, its location and each approach obtained and part in question, seeing, in addition to common transit areas, among others, what could be:

- A CH 10 garage.

- In the image of CH7, you can see chairs and a photocopier and clothes hanging on a rack, can be a work area.

- In the image of CH14, you can see a space with a table and chair and two machines of the that could be a sandwich, coffee, etc., and next to it what could be a bulletin board glazed ignoring what is exposed.

- In the image of CH16, a separating space for dispatches, with sheets and lists exposed, not knowing what space it would be and what it focuses on.

In total, they have contributed 9 images of interior, plus one called "test 1" that is described know what space it would be. It is unknown what happens with the rest of the cameras, being able not

All images have been provided.

The exterior shot of CAM02 is also unknown, being able to be seen from the shot of behind, a large vehicle parking space. It is unknown if it is from the closed area, allowing them to be identified, both by their registration, and if any person goes up or down of them, or any pedestrian passing through that area. It is unknown if there is also Information poster in that car park, if it is owned by the claimed one.

From the outside they provide another image, ignoring if they have sent all the exterior images what they have

It states that they signed a security and surveillance service contract for the headquarters with SABICO SECURITY SA. They provide a copy of the same, legal specifications of hiring of the service (folios 113 to 140), and techniques (141 to 144), being its object the service of surveillance and security of the building, the interior area for parking and the roads delimited by the perimeter fence. None of the documents refers to access of SABICO personnel to data from the video surveillance system.

The space in which the images are displayed or the recording system used is not detailed. the operation entails, nor the people who have access to them, nor what is the protocol of image recording request or who can request it

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They provide a copy in document 7 of the record of treatment activities called activity video surveillance entity that regulates the management of video surveillance services of the different installations.

THIRD: On 08/13/2020, the claim was admitted for processing.

FOURTH: In accordance with Law 8/2014, of 07/17, on the second restructuring of the sector regional public, Autonomous Community of the Principality of Asturias «BOPA» no. 171, of 07/24/2014 «BOE» no. 253, of 10/18/2014, Radiotelevision of the Principality of Asturias, SAU, is a public limited company whose share capital belongs entirely to the Principality of Asturias, its corporate purpose being “the provision of the public service of audiovisual communication in the terms established in this law, as well as those other activities necessary aries for the exercise of their functions of public service or that are related to the audiovisual communication.

Radiotelevisión del Principado de Asturias, SAU, will be governed by this law, its rules of development and its bylaws; by audiovisual legislation, by regulatory standards of the autonomous public companies in what is applicable to them and, in the absence of the former, subsequent regulations, by commercial law. (article 6).

FIFTH: On 10/16/2020, it is agreed by the Director of the AEPD

“FIRST: INITIATE PUNISHMENT PROCEDURE for RADIOTELEVISION OF THE PRINCIPALITY OF ASTURIAS, with NIF A33924606, for the alleged infringement of the articles:

-5.1c) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 04/27/2016



on the protection of natural persons with regard to data processing

personal and to the free circulation of these data (hereinafter, RGPD); as indicated

Article 83.5 a) of the RGPD.

-12 of the RGPD, in relation to 22 of the LOPDGDD, as indicated in article 83.5.b)

of the GDPR.”

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1/10,

of the Common Administrative Procedure of the Public Administrations, the sanctions

that could correspond would be an administrative fine.”

It was indicated IN THE BASIS OF LAW V:

“The alleged breaches of the RGPD for which the claimed party is held responsible have

to consider:

-For the infraction of article 5.1 c) the nature of the space of

entertainment that can be captured by the camera in which the images are taken (83.2.a), and the

intentionality that is accredited 83.2.b).

Without prejudice to what results from the instruction of this procedure, the

amount of this alleged infringement in 20,000 euros.

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In the infringement of article 12 of the RGPD, the duration of the infringement in relation to

the date of entry into force of the LOPGDD (83.2.a), so that without prejudice to what results

te of the instruction of this procedure, the amount is quantified in 6,000 euros.”

SIXTH: Dated 10/19/2010, the notification is accepted.

-On 11/3/2020, the last day of the ten-day period provided for allegations, it was received

ben allegations of the claimed.

1-Provides payment of 3,600 euros, additional concept "reductions for acknowledgment of responsibility liability and voluntary payment", adding that "it recognizes its responsibility and proceeds to voluntary subscription renouncing any action in contentious-administrative proceedings "

2-On the infringement of article 5.1.c) of the RGPD, for the alleged capture of images of space used for rest, coffee area, states:

-The camera that has captured the images for which the procedure has been opened is not- They are not intended to capture the vending area but the door that is in the image, as a means of securing their facilities. "This door allows access to one of the courtyards of the claimed interior"

"At the exit door to the outside there is a sign that announces exit", which can be seen in the front picture shot. To the left of the image shot, there is a corridor that ends in offices. He considers that it is an area that requires special surveillance because it is an en-triad

-The room in which the images are partly collected, intended as a rest area for employees is the only place they have available for it. When the facilities are delivered, "a system of video surveillance cameras was already included"

-Understands the measure as the most proportional for the surveillance of the entrances to the installations. relations with these cameras since other options such as placing a security guard ity, it would be much more disproportionate in terms of its cost.

-Provides image that is captured with the camera ( CH 14) the room, rest area, with two machines, chairs and table, the door that leads to the patio in front. It can be seen in the left area He wants a coffee machine and next to it another bigger one for sandwiches and other products. In the left area of the machines, a board apparently could be a bulletin board, closed do, and a table with two chairs. There is a certain free space between the chairs and the machines, as well as in the center of the room where employees can be for example, from

standing drinking coffee and chatting.

-Details a relationship of four points of the complete image as it is collected up to now-  
da, to break down its structure and vision. From the front, point one and two, exit sign in  
middle of the door that leads to the exit, two, the corridor area that starts on the left  
of the door leads to offices (it is not appreciated that the corridor continues on the right side of the  
door and in fact the sketch he provides confirms this)

Recognizes that the camera is oriented so that it takes a full view to capture  
people coming through the door and going down the hall. "One more orientation to the  
right would cause an added difficulty to control inputs and outputs" Compare a es-  
space indicated with number three, right side, with four, on the left, partial photo

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that groups table, chair, plank and a machine, indicating that the current approach is proportionate.  
nal.

In the sketch it provides, it can be seen that this room or space is entered through a corridor  
or "central zone", and it can be transited to, passing through the space, towards the dispatch zone.  
cho mentioned.

Add:

1- "Article 20.3 of Royal Legislative Decree 2/2015, of 10/23, approving the  
Consolidated text of the Workers' Statute Law establishes that the employer may  
shall implement the security and control measures necessary to guarantee compliance  
compliance with the regulations in its facilities. Among these measures are the installation  
tion of surveillance cameras."

2-“The use of the camera in the area is proportional and justified for compliance with the corporate surveillance and control obligations recognized in article 20.3 of the text recast of the Workers' Statute, in connection with articles 33 and 38 of the constitution Spanish degree.”

SEVENTH: With date, a proposal for resolution of the literal is issued:

“That by the Director of the Spanish Data Protection Agency:

a) RADIOTELEVISIÓN DEL PRINCIPADO DE ASTURIAS, with NIF

A33924606, for an infringement of article 5.1.c) of the RGPD, in accordance with article 83.5 of the RGPD, with a fine of 20,000 euros.

b) Declare the procedure finished in the part that affects the infraction imputed to

RADIOTELEVISION OF THE PRINCIPALITY OF ASTURIAS by article 12 of the RGPD.”

#### PROVEN FACTS

1) The defendant has video surveillance cameras installed inside her building, without capacity of movement, fixed. The purpose of the cameras installed inside are the security of the facilities and property of the center. In general, the images capture common and transit spaces of the building.

2) In the transfer of the claim, June 2020, the respondent provides photography of images obtained inside your establishment, appearing at the entrance on a column a video surveillance area warning sign The sign bears a legend of the Organic Law 15/99 and that you can exercise your rights before the claimed.

3) The image taken by the CH 14 camera can also be seen. Although it does not provide a photo of where the camera is placed, it is in a passage space or room and that it is used as a rest area for employees. It is seen, according to the image captured by the camera, on the left a table with two chairs, to the right of the table, a notice board near

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rado, and to its right a coffee machine. Next to it, a machine twice the size  
ño that the previous one, of sandwich, drinks and so on. Between the table and the machines and in the  
central area of the room also forms a space that is focused and captured  
For the camera. This camera, according to the one claimed, is intended to focus on the door of  
entrance that will be about 8 meters in front of the camera focus. The camera is collecting  
all this frontal space, plus the previously outlined space of the landing zone.  
canso, which is a wide and important extension of rest area for employees.  
two.

4) The defendant has a contract with the security company SABICO, for security  
building safety and security, facility alarm system and CCTV system  
in 24 hour shifts. It is not indicated that he has access to the images or that there was  
administered the video surveillance system.

## FOUNDATIONS OF LAW

Yo

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 procedure.

II

Regarding the obligation to preserve images for a period not exceeding 30 days, the  
(RGPD), in its recital 39, announces the need to "guarantee that it is limited to a  
strict minimum" the term of conservation of personal data, which in turn  
must be "adequate, relevant and limited to what is necessary for the purposes for which  
be treated." Article 22.3 of the LOPDGDD specifies – regarding treatments with

video surveillance purposes – that “the data will be deleted within a maximum period of one month since its capture.

With the application of the RGPD since 05/25/2018, it must be considered that most of Instruction 1/2006 of 8/11, of the Spanish Agency for Data Protection, on the treatment processing of personal data for surveillance purposes, BOE 12/12/2006, entry into force 13, has been displaced, since its content, such as the legitimacy or the rights of people, is displaced by what is established in this regard by the norm European.

In addition to being the same period of conservation, at the moment in which the events occur, if the aforementioned provision on the conservation of images was applicable.

With the RGPD, the obligation to register files referred to in the Instruction disappears.

1/2006, it can be considered that the provisions of article 6 of the citation remain in force.

gives instruction that regulates the term of conservation, and that refers to the occurrence of the cancellation of images within a maximum period of one month.

On the other hand, an interpretation in accordance with the RGPD, since it does not contemplate the cancellation tion but the deletion, means that this retention period of a maximum of one month does not

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will be of cancellation but of deletion, except in those cases in which they must be confirmed.

serve to prove the commission of acts that threaten the integrity of persons,

goods or facilities. The AEPD, in 2019, in its Guide on the use of video cameras for

security and other purposes, has specified that the period of one month indicated in said Instruction is, effectively, suppression.

However, if during the legitimate treatment (within a month from its capture) observes that the images can “prove the commission of acts that attempt against the integrity of people, goods or facilities”, there is a duty to communicate the existence of the recording “within a maximum period of 72 hours” and its delivery to the authorities (art. 22.3 LOPDGDD). Consequently, the images would start to be treated within the framework of the respective judicial procedure, police investigation or administrative procedure sanctioning

As for the images captured on \*\*\*DATE.3, they were provided to the Court in 2018, then if they contain personal data as indicated in the police report, they will be inferred that they have been kept longer than expected, without explaining a reasonable cause, because the aforementioned regulations were applicable.

Considered a possible serious infringement contained in article 44.3.b) of the LOPD, as treatment at the time, without legal basis provided for in article 6.1 and 6.2 of the LOPD, said infringement would carry a statute of limitations of two years from the date on which that can be understood committed (article 47.1. and 2 LOPD).

Taking into account the statements given in response to the transfer by the claimed "...the 04/24/2018 they sent a copy of the recordings of the day \*\*\*DATE.3, but due to a pro-technical problem for which the images could not be displayed, so in a second request of 05/25/2018, the documentation was sent to the court on that same date.", and the letter of \*\*\*DATE.2 from the Police addressed to the court of instruction 4 of Gijón, which the complainant contributes, the alleged infraction would have ceased to be committed when it ceases to be known or accredited the conservation of the images, that is to say when they are yielded to the judge. counting April, May 2018 as the date. Therefore, in April-May 2020, (with the additions two of the suspension of pandemic deadlines inclusive, the infringement of possession and conservation of images beyond the established period cannot be presumed if there is no evidence bas determinants, and would be prescribed when the agreement is initiated.

On the legitimacy of the implementation of the video surveillance system in the company claimed, according to the claimed, would be Royal Legislative Decree 1/1995, of 03/24, which approves the consolidated text of the Workers' Statute Law (LET) Statute of the Workers, note that article 20.3 states:

"3. The employer may adopt the measures it deems most appropriate for surveillance and control to verify the fulfillment by the worker of his obligations and duties labor, keeping in its adoption and application the consideration due to their dignity and taking into account, where appropriate, the real capacity of workers with disabilities."

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The proportionality alleged in relation to said article does not apply to the present case, where the purpose of the installation and collection of images is the pure security of facilities, that no foreign element enters through the door that focuses the access, that It cannot be confused with the control of compliance with labor obligations. The proportionality will have to be assessed between said purpose that is not related to the labor control purposes, as reiterated by the petitioner.

Not being its purpose that of labor control, it follows that it is not necessary to inform the employees for that purpose, but if it is to be reported generally, and for the public

Whether or not they are employees who circulate through said spaces. In this sense, both the LOPD and the RGPD and the LOPDGDD establish the way to do it, proving that the claimed paid the amount of the fine for said infraction.

Article 22 of the LOPDGDD, indicates:



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

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 attempt 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.

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

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood fulfilled by placing an informative device instead sufficiently visible identifying, at least, the existence of the treatment, the identity of the responsible and the possibility of exercising the rights provided for in articles 15 to 22 of the Regulation (EU) 2016/679. A code may also be included in the informative device connection 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.

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.”

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The permanent implementation of a system that allows continuous monitoring through of video cameras for security reasons has a legitimate basis in the LOPDGDD, whose statement of reasons indicates:

“Together with these assumptions, others are included, such as video surveillance, data files, advertising exclusion or internal complaint systems in which the legality of the treatment comes from the existence of a public interest, in the terms established in article 6.1.e) of Regulation (EU) 2016/679”

It must be remembered that article 6.1.e) of the RGPD indicates;

1.

conditions:

The treatment will only be lawful if at least one of the following is met

e) the treatment is necessary for the fulfillment of a mission carried out in the interest public or in the exercise of public powers vested in the data controller;

Article 89, which refers to the processing of images obtained with a camera system or video cameras, for the exercise of control functions of workers or employees public, which is not the case under examination, adds, in section 2:

"two. In no case will the installation of sound recording systems or video surveillance in places intended for rest or recreation of workers or public employees, such as changing rooms, toilets, dining rooms and the like."

This means that the installation intended expressly for said purpose, nor the diversion of another lawful purpose that partially incurs said prohibition as in this case, that with a legitimate purpose, the space or area mentioned is being focused, when it is proven that this is not at all necessary, and the purpose of security by strictly focusing on the objective of the door.

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Without prejudice to the information obligations to persons who may pass through these spaces, it is a public space. Therefore, the focus of the camera must focus on monitoring the concrete and specific areas of particularized risk, confined and limited to what is necessary in order not to affect the space available to the employees.

The possible and continuous monitoring through video of the employees in the area of rest is exceptionally justified for express, motivated and justified reasons.

Logically, in the areas where the employees rest, relax or have a coffee there are genuine and reasonable expectations that your privacy be respected.

The sacrifice or limitation of this right of employees must obey certain motivated and duly explicit reasons. However, in this case, the conflict of interests of the right to the security of the company's facilities for the conservation of its facilities and assets can be combined with the rights of employees to your privacy. In this case it can be seen that they could coexist, the camera focusing on the security objective centered on the access door, if it is adjusted and reduces the excess data collection that invades part of the rest area, adjusting it to the purpose sought without hindering its objective.

It is estimated that when the respondent compares the spaces indicated in the image, numbered looking at parts of the space, it does not take into account that in addition to the part itself that can already be seen in the image (chairs, tables, machines and bulletin board), there is a space in front of the machines and to the right of the chairs whose uptake could also be avoided so as not to invade the reserve of the area, so that limiting in part the effects of the approach would preserve a higher degree of privacy reserve in that area. This would not only prevent them from seeing

the chairs, table, bulletin board, and machines, but that area of space that is not precisely to focus, to focus on the target

The image to be obtained must be in front of the door, clearly specifying a change of focus so that it only points at the rectangle that has the front of the door, which is the objective to achieve, accesses and exits, so that it can be seen who can enter, leave. This can be achieved in various ways, not to mention that the camera can be placed in another area, such as more advanced, in the middle of the room, changing the capture space or by putting a mask on the left side of it.

The general principles applicable to the processing and recording of images by video surveillance, at the date of the claim, were contained in the LOPD, and are the same that are contained in the GDPR.

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According to the claim, the purpose of collecting images is security, not

It seeks to control employees. Against this, it should be noted that the treatment of data must be limited and adjusted to the purpose for which it is established, it must not be processed when the purpose is incompatible, or must be treated in its fair terms, making it compatible with other rights that concur when the purpose is not stopped with it. Either should be treated with such a breadth of data collection, that they are not considered necessary, adequate or accurate for the purpose.

Along with this, there are general limitations that prohibit capturing in spaces not only private, but intimate to the employees, such as the locker room, dining room, or break room.

This ultimately implies the commission for the claimed infringement of article 5.1.c)

of the RGPD, which indicates: "1. The personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which that are processed ("data minimization");"

The claimed party must weigh, in each case, between the intended purpose and the possible affect-  
tion for the use of the video camera to the right to honour, to one's own image and to intimacy  
people's ness. In this case, it did not consider the space shared by employees.

in a time of non-provision of services and the lack of suitability of the chamber that serves  
do to the security of the facilities is capturing images of a large part of the space  
intended for the rest of the staff, thus accrediting the imputed infraction.

v

As for the informative poster, the one provided, still referred to the regulations that ceased to be  
in force since the LOPDGDD, so it is not considered updated in content and form,  
considering that the poster that contributes in June 2020 when the GDPR came into force in  
2018, being published in 20016, having enough time to vary that information

What the commission of an infringement of article 12 of the RGPD means

"1. The person responsible for the treatment will take the appropriate measures to facilitate the  
interested all information indicated in articles 13 and 14, as well as any  
communication under 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. The information will be  
provided in writing or by other means, including, if applicable, by electronic means.

When requested by the interested party, the information may be provided verbally as long as it is  
prove the identity of the data subject by other means.

2. The data controller will facilitate the interested party in the exercise of their rights  
under articles 15 to 22. In the cases referred to in article 11, paragraph 2, the

responsible will not refuse to act at the request of the interested party in order to exercise their rights under articles 15 to 22, unless you can show that you are not in conditions to identify the interested party.

3. The data controller will provide the interested party with information regarding their

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proceedings on the basis of a request under articles 15 to 22, and, in

in any case, within one month from receipt of the request. Said term

may be extended for a further two months if necessary, taking into account the complexity and

the number of requests. The person in charge will inform the interested party of any of said

extensions within a month from receipt of the request, indicating the

reasons for the delay. When the interested party submits the request by electronic means, the

information will be provided by electronic means whenever possible, unless the

The interested party requests that it be provided in another way.

4. If the person in charge of the treatment does not process the request of the interested party,

will inform without delay, and no later than one month after receipt of the request, of

the reasons for its non-action and the possibility of presenting a claim before a

supervisory authority and exercise judicial actions.

5. The information provided under articles 13 and 14 as well as any

communication and any action carried out under articles 15 to 22 and 34 will be

free title. When the requests are manifestly unfounded or excessive,

especially due to its repetitive nature, the data controller may:

a) charge a reasonable fee based on the administrative costs incurred

to facilitate the information or communication or perform the requested action, or

b) refuse to act on the request.

The data controller shall bear the burden of proving the character

manifestly unfounded or excessive of the request.

6. Without prejudice to the provisions of article 11, when the person responsible for the treatment has reasonable doubts in relation to the identity of the natural person who submits the request referred to in articles 15 to 21, you may request that the additional information necessary to confirm the identity of the interested party.

7. The information that must be provided to the interested parties under articles 13 and 14 may be transmitted in combination with standardized icons to provide in an easily visible, intelligible and clearly legible form an adequate overview of the planned treatment. The icons that are presented in electronic format will be legible mechanically."

In relation to 22 of the LOPDGDD that indicates: Processing for video surveillance purposes":

"4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood fulfilled by placing an informative device instead sufficiently visible identifying, at least, the existence of the treatment, the identity of the responsible and the possibility of exercising the rights provided for in articles 15 to 22 of the Regulation (EU) 2016/679. A code may also be included in the informative device connection 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."

SAW

Article 58.2 of the RGPD indicates:

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"two. Each control authority will have all the following corrective powers indicated-

two below:

d) order the person in charge or in charge of the treatment that the treatment operations

comply with the provisions of this Regulation, where appropriate, in a certain

nothing way and within a specified time;

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;"

Article 83.5 a) and b) of the RGPD considers that the infringement of "the basic principles for

processing, including the conditions for consent under articles 5, 6,

7 and 9" and those of the "rights of the interested parties under articles 12 to 22" are

punishable, in accordance with section 5 of the aforementioned article 83 of the aforementioned

Regulation, with administrative fines of a maximum of €20,000,000 or, in the case of

a company, of an amount equivalent to a maximum of 4% of the total turnover

annual global of the previous financial year, opting for the highest amount.

7th

Regarding the amount of administrative fine sanctions that would proceed to impose,

must be in accordance with the provisions of articles 83.1 and 83.2 of the RGPD, precepts that

point out:

"1 Each control authority will guarantee that the imposition of fines

administrative actions under this article for infringements of this Regulation

indicated in sections 4, 5 and 6 are in each individual case effective, proportionate and

dissuasive."



“2 Administrative fines will be imposed, depending on the circumstances of the 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 an administrative fine and its amount in each individual case shall be duly taken into account:

- a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the treatment operation in question as well as the number of interested parties affected and the level of damages they 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 the articles 25 and 32;
- e) any previous infraction 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

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- 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, and

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.”

In relation to section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

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

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the offender's activity and the performance of personal data processing.

sound.

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 crime.

infringement.

e) The existence of a merger by absorption process subsequent to the commission of the infraction.

tion, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection delegate.

h) Submission by the person in charge or person in charge, on a voluntary basis, to

alternative conflict resolution systems, in those cases in which there are

controversies between them and any interested party.”

The alleged breaches of the RGPD for which the claimed party is held responsible must be confirmed.

consider:

For the infringement of article 5.1 c) of the RGPD, the nature of the space is taken into account entertainment that can be captured by the camera in which the images are taken (83.2.a), and the intentionality that is accredited 83.2.b), with a penalty of 20,000 euros.

The defendant paid after the resolution proposal, the amount mentioned with the reduction of 20%, 16,000 euros (sixteen thousand euros) indicated in article 85 of the LPACAP, which states: "Termination in sanctioning procedures"

"1. Once a sanctioning procedure has been initiated, if the offender acknowledges his responsibility, It will resolve the procedure with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a sanction pecuniary and another of a non-pecuniary nature, but the inadmissibility of the

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second, the voluntary payment by the alleged perpetrator, at any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of altered situation or the determination of compensation for damages caused punished for committing the offence.

3. In both cases, when the sanction is solely pecuniary in nature, the competent to resolve the procedure will apply reductions of at least 20% on the amount of the proposed sanction, these being cumulative with each other. The aforementioned reductions, must be determined in the notification of initiation of the procedure and its effect. tivity will be conditioned to the withdrawal or renunciation of any action or resource in process administrative against the sanction.

The reduction percentage provided for in this section may be increased by regulation.

mind."

In the infringement of article 12 of the RGPD, the duration of the infringement in relation to the fe-  
date of entry into force of the LOPGDD (83.2.a), was quantified in the initial agreement in  
6,000 euros. This amount was paid with the benefit of the double discount of 20%, in the  
period of allegations, acknowledging their responsibility and paying it.

Therefore, in accordance with the applicable legislation and having assessed the graduation criteria  
of the sanctions whose existence has been proven,  
the Director of the Spanish Data Protection Agency

RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00261/2020, in accordance  
with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to RADIOTELEVISIÓN DEL PRINCIPADO  
OF ASTURIAS.

THIRD: In accordance with the provisions of article 50 of the LOPDGDD, 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  
LOPDGDD, and in accordance with the provisions of article 85.3 of the LPACAP the

Interested parties may directly file a contentious-administrative appeal before the Chamber

of the Contentious-administrative of the National High Court, in accordance with the provisions of the

article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13/07,

regulation of the Contentious-administrative Jurisdiction, within a period of two months from

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, it may be

precautionary suspension of the firm decision in administrative proceedings if the interested party expresses

its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

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Spanish Data Protection, presenting it through the Electronic Registry of the

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

remaining records provided for in art. 16.4 of the LPACAP. You must also transfer to the

Agency the documentation that proves 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 terminate the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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