

□ Procedure No.: PS/00236/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the claimant) dated January 27, 2021

filed a claim with the Spanish Data Protection Agency. The

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

The reasons on which the claim is based are succinctly the following:

“That on 06/14/20 the claimant was at Bar ***BAR.1 of the

Almeria town of ***LOCALIDAD.1 when at a given moment the same

suffered an accidental fall on it.

“That on later dates it proceeded to circulate through WhatsApp between a number

indeterminate neighbors of the town a video from the cameras of

security of the establishment Bar ****BAR.1 where you can see the

pictures of Mr. A.A.A. (...)”

“That the dissemination of such images caused damage and harm both to the honor

and image of the claimant, as well as that of his family, as it is a small

place where he is well known”

“Such a video has also been disseminated through its publication in the

digital newspaper Almería today as of November 17, 2020” (folio nº 1).

Along with the claim, provide documentary evidence (photographs) that prove the

presence of the cameras in the hotel establishment (Annex I).

Item, provides documentary evidence (Doc. No. 3) Notarial Certificate by which

protocolized Internet pages that allow access to the reproduction of the

video.

SECOND: On 03/08/21, the TRANSFER is made to the claimed party to that it allege in law what it deems appropriate, without any answer having been made to date.

THIRD: On June 14, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the defendant, with glo to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-Common Administrative Procedure of Public Administrations (hereinafter, LPA-CAP), for the alleged infringement of Article 5.1.b) of the RGD, typified in Article 83.5 of the GDPR.

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FOURTH: The database of this AEPD consulted on 07/20/21 does not contain any allegation in this regard by the accused party.

FIFTH: On 07/27/21, a “Resolution Proposal” is issued, the same notification being each in a timely manner, confirming the described infringement of art. 5.1 b) RGD, pro-imposing a sanction encrypted in the amount of €3,000.

SIXTH: On 09/01/21, the database of this Agency was consulted. cia, not stating any allegation on the part of the claimed.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

First. The facts bring cause of the claim dated 01/27/21 through the

which transfers "the use of images extracted from the video-surveillance system installed in the hotel establishment bar ***BAR.1 for dissemination through the WhatsApp application, as well as in other media" (folio nº 1).

Second. It is identified as the main person in charge Mr. B.B.B., responsible for the video-surveillance system installed in Bar ***BAR.1.

Third. There is a Notarial Act provided by which the pages of Internet that allow access to the reproduction of the video obtained from the cameras of the establishment Bar ***BAR.1, where the image of the claimant is displayed (Documentary Evidence No. 1 Documentary Annex).

Bedroom. It is accredited that the hotel establishment Bar ***BAR.1 has a system of video-surveillance cameras that allows obtaining images of the interior of the same, counting on the obligatory poster (s) informing that it is a question of a zone video-surveillance.

Fifth. It is accredited that a treatment of the affected data has been carried out. do with the intention of taunting using the images obtained from the camera system installed in order to affect the honor of the same by disseminating images of the claimant that could affect your public reputation.

FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

In the present case, the claim dated 01/27/21 is examined by me-gave from which is transferred as the main fact:

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“dissemination of images obtained from the video-surveillance camera system without justified cause affecting the honor and personal privacy” (folio nº 1).

The facts are specified in the use of images extracted from the system of video-surveillance of the establishment-Bar ***BAR.1-, without legitimate cause for it, being publicly disseminated both on social networks and in the media of a public nature.

Article 5.1 b) RGPD provides the following:

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not considered will be incompatible with the original purposes ("purpose limitation")

The image of a person is a "personal data" whenever it can be identify, which can be treated in different ways, for different purposes.

The purpose of a video-surveillance system is the security of the property private property and residents against external aggression (eg robbery with force in the things).

The art. 22.1 LOPDGDD (LO 3/2018, December 5) provides:

“Physical or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of to preserve the safety of people and property, as well as its installations.

nes”.

Likewise, the images (personal data) obtained with them must be kept only to be made available to the competent authority "to accredit order the commission of acts that threaten the integrity of persons, goods or facilities relations" (art. 22.4 LOPDGDD).

The transfer of the images obtained from a video-surveillance system are assessed in the regulations, also specifying the reasons for doing so, not being able to disseminated for a purpose incompatible with obtaining them: the security rity.

The diffusion of the same through different means does not find accommodation in any legitimate cause for it, carrying out a "processing of the data" of the affected- outside the cases permitted by law, being incompatible with the purpose of se- security to which the installation of the same obeys, being treated without due reserve required in these cases.

III

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In accordance with the evidence available in this proceeding punisher, it is considered that the defendant has proceeded to publicly disseminate the images obtained from the video-surveillance system under your responsibility without cause justified.

Video surveillance systems allow the recording of personal information in the form of images.

The images obtained from the video-surveillance system installed in the establishment hospitality foundation Bar ***BAR.1 were used by the main responsible for transferring a specific event that occurred within it, which has nothing to do with the purpose to which this type of device obeys: security of the establishment.

I lie.

Item, the recordings (with the affected data) are used to broadcast a event that occurred inside the establishment, which has nothing to do with alleged criminal conduct, through a WhatsApp Group, as well as by other public media.

The known facts constitute an infraction, attributable to the claimant. mado, for violation of the content of art. 5.1 b) GDPR.

IV

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

to)

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

When motivating the sanction, the following is taken into account

- the nature, seriousness and duration of the offence, taking into account the nature nature, scope or purpose of the treatment operation in question, as well as the number of interested parties affected and the level of damages suffered fried; (art. 83.2 a) RGPD).

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

public dissemination through a WhatsApp Group, as well as on social networks, without justified cause for it-(art. 83.2 b) RGPD)—existing voluntariness in the accomplished situation that obeys a spurious purpose.

The behavior described is considered intentional, since from the ample indications exposed, it is inferred that he has voluntarily obtained the images of the cardiac system. maras of the hotel establishment, for further public dissemination with a spirit of harm the owner of the data, not being public exposure the appropriate means to report any fact that could be reportable in your case

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For all these reasons, a penalty of €3,000 is agreed for the infraction of art. 5.1 b) RGPD, sanction located on the lower scale for this type of infractions.

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 Don B.B.B., with NIF ***NIF.1, for a violation of Article 5.1.b) of the RGPD, typified in Article 83.5 of the RGPD, a fine of €3,000 (Three A thousand euros).

SECOND: NOTIFY this resolution to B.B.B. and REPORT the result of the proceedings to the claimant Mr. A.A.A.

THIRD: 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

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.

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