

□ Procedure No.: PS/00289/2020

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) on June 4, 2020 filed
claim before the Spanish Data Protection Agency. The claim is
directs against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one). The reasons in which
the claim is based on are as follows:

"It has a camera with recording, camouflaged with possible recording of
audio, which focuses on the road and the terrace outside, 24 hours a day
breaching the DATA PROTECTION law" (folio nº 1).

Likewise, it considers that the installed sign is FALSE (...)"

Along with the claim, provide documentary evidence that proves what was stated
by the complaining party.

SECOND. On 07/10/20, the TRANSFER of this claim is made
for the appropriate legal purposes.

THIRD. On 08/21/20, a written statement was received from the accused manifesto.
celebrating the following:

-I provide the photograph of the two posters that warned at that time of the
existence of video-surveillance zone.

-I did not have and do not have any contracted security company (...).

-The aforementioned cameras are used for security reasons of the establishment.
lien and goods (...).

-The system allows only visualization and also the recording of images.

FOURTH: On November 24, 2020, the Director of the Spanish Agency of Data Protection agreed to initiate sanctioning procedure to the claimed, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 5.1.c) of the RGD, typified in the Article 83.5 of the RGD.

FIFTH: On 03/10/21, this AEPD received a written statement of allegations from the party reported:

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"That by means of this document, I enclose photographs accrediting the removal of the camera that was outside the establishment, as (...). Being able to appreciate the previous stage and the current one".

SIXTH: On 03/12/21, a "Resolution Proposal" is issued, confirming the sanction of Warning, for the violation of art. 5.1 c) RGD, by providing a video-surveillance camera system not adjusted to current regulations.

SEVENTH: Attached as an annex is a list of documents in the process.

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

PROVEN FACTS

First. On 06/04/20 a claim is received through which the

The main fact is the following:

"It has a camera with recording, camouflaged with possible recording of audio, which focuses on the road and the terrace outside, 24 hours a day breaching the DATA PROTECTION law" (folio nº 1).

Second. It is identified as the main responsible Mr. B.B.B., who has proceeded to remove the device.

Third. No allegation is made as to the reason for a camera installed surreptitious way.

Fourth. It is not proven that the installation of the same complied with the requirements legally marked.

Fifth. No claim has been made about the "treatment" of the data obtained with the same and period of conservation of the images.

Sixth. It has not been proven that it had an informative poster informing of the rights corresponding to the clients of the establishment.

FOUNDATIONS OF LAW

Yo

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

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On 06/04/20 a claim is received through which it transfers as a fact

main the following:

"It has a camera with recording, camouflaged with possible recording of audio, which focuses on the road and the terrace outside, 24 hours a day breaching the DATA PROTECTION law" (folio nº 1).

The art. 5.1 c) RGPD provides the following: The personal data will be:

"adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed felled comply with current legislation, proving that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative sign.

tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each personal character.

Article 22 section 4 of LO 3/2018, December 5, provides the following:

"The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an informative device in a sufficiently visible place 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 the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code or internet address to this information".

In any case, the cameras must be oriented towards the particular space, avoiding intimidate neighboring neighbors with this type of device, as well as control zonas of transit of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either. co, as this is the exclusive competence of the State Security Forces and Bodies ted.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards private space, since it is considered that this type of device can affect the privacy of third parties, that they are intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install imaging devices of public space, outside the cases allowed in the regulations.

III

In accordance with the evidence available in this proceeding, penalty, it is considered that the defendant has a system of cameras that records the public space intended for the terrace area, without just cause for it.

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The administrative concession granted in its case for the use of space public is exclusively for the installation of a terrace, which does not justify the placement of cameras oriented towards said area, with the consequent control of space public.

Security cameras installed in private spaces will not be able to obtain images public spaces, the security function of public spaces corresponding to exclusively to the State Security Forces and Bodies, not to the Companies.

Private Security companies or individuals.

The facts constitute an infraction, attributable to the defendant, for violation of the content of art. 5.1 c) RGPD, previously transcribed.

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:

a)

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

The Supreme Court (Judgments of July 5, 1998 and March 2, 1999) comes understanding that recklessness exists whenever a legal duty of care is disregarded. given, that is, when the offending subject does not behave with the required diligence.

v

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation provides ne in your art. 58.2 b) the possibility of sanctioning with a warning, in relation to what stated in Recital 148:

"In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than a sanction.

tion by means of a fine, a warning may be imposed. You must, however, pay

Special attention is paid to the nature, seriousness and duration of the infraction, its character

intentional ter, to the measures taken to alleviate the damages suffered, to the

degree of responsibility or any relevant prior violation, the manner in which

the control authority has become aware of the infraction, to the fulfillment of

measures ordered against the person in charge or in charge, adherence to codes of

conduct and any other aggravating or mitigating circumstance."

SAW

According to the arguments put forward and the evidence provided, it is considered evidence that the defendant had a camera installed surreptitiously, without that the reason for the installation has been explained, which confirms the illegality of the following

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situation described, although the same has proceeded to the immediate withdrawal of the same, for what is considered correct is to propose a Warning without any additional measure.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., with NIF ***NIF.1, for an infraction of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to B.B.B..

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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-131120

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