

936-031219

□ Procedure No.: PS/00360/2019

RESOLUTION R/00043/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00360/2019, instructed by the Agency

Spanish Data Protection Agency to A.A.A. (BAZAR SUSANA), view of the complaint

presented by D.G. OF THE CIVIL GUARD - PAFIF DE COSTA TEGUISE, and based

to the following,

BACKGROUND

FIRST: On December 17, 2019, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against A.A.A. (BAZAAR

SUSANA) (hereinafter, the respondent), through the Agreement that is transcribed:

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Procedure No.: PS/00360/2019

935-240719

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for the Protection of

Data and based on the following

FACTS

FIRST: DG OF THE CIVIL GUARD - PAFIF DE COSTA TEGUISE (hereinafter,

the claimant) on July 1, 2019 filed a claim with the Agency

Spanish Data Protection. The claim is directed against A.A.A. (BAZAAR

SUSANA) with NIF ***NIF.1 (hereinafter, the claimed one).

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The reasons on which the claim is based are "it is received by mail official email, complaint and image file (...) sent by D. B.B.B., by the which transfers as a fact "As a Judicial Expert in Patents and Trademarks ... being with the Civil Guard...investigating an alleged crime against industrial property, I am recorded by the security cameras of a commercial establishment, we believe that is Bazar Susana (attached photo) and having knowledge attached video, that the images recorded by the security cameras where my image appears (...)— folio nº 1--.

“Asked if you have the corresponding activity record card,

He states that he is unaware of it, as does the informant sign of the video-surveillance zone.

Likewise, you are requested to download the images captured by the cameras last 06/05/18, between the strip (...) and corroborate if in said establishment, the recording of images of the complainant was made, to which refers that he does not know how to do it, as well as if they are in the device of storage".

Together with the claim, it provides a recording in CD-Room format and an Annex of the Complaint of the referenced complainant.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, the Subdirector General for Inspection of Data proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and

in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed that the data controller is the claimed party.

THIRD: On 10/08/19 allegations were received from the defendant-Bazar Susana—arguing that at all times she complies with the regulations regarding data protection, as well as that it has informative posters in the establishment in accordance with the provisions of the Law.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, 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 solve this procedure.

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II

In the present case, we proceed to examine the Complaint sent by the Forces and State Security Corps on date 07/01/19 through which it is transferred as main fact, the following:

"It is received by official email, complaint and image file

(...) sent by D. B.B.B., by which it transfers as fact "As a Judicial Expert in

Patents and Trademarks...being with the Civil Guard...investigating an alleged crime

against industrial property, I am recorded by the security cameras of a

commercial establishment, we believe it is Bazar Susana (attached photo) and having

video attached knowledge, that the images recorded by the security cameras

where my image appears (...)—folio nº 1--.

The facts are specified in the "data processing" of a public employee,

outside the cases permitted by the regulations in force, being his image disseminated to

through the Whatsup application, after presumably obtaining it from the hard drive where

They stored the same.

The art. 5.1 f) RGPD provides: "The personal data will be:

f) treated in such a way as to ensure adequate security of the

personal data, including protection against unauthorized or unlawful processing and

against its loss, destruction or accidental damage, through the application of measures

appropriate technical or organizational ("integrity and confidentiality").

On the part of the acting force, it is accompanied by an extensive Report,

identifying the place where the video surveillance camera is installed—Bazar

Susana—located in Playa Blanca, with CIF nº ***NIF.1.

A total of five cameras are installed inside the establishment

that obtain clear images of the entire establishment. Two of them

focus on the interior and another two, at the entrance of the premises, a fifth covering the area of

cash register (place where the viewing monitor is located).

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“Although the defendant, referred to in this Report, A.A.A., in no moment confirmed said recording was made from the establishment that runs, we proceed to make a comparison of the recording with the image captured in the time of inspection (...).”

The art. 77 section 5 of Law 39/2015 (October 1) provides the following:

“The documents formalized by the officials who are recognized as condition of authority and in which, observing the legal requirements corresponding the facts verified by those are gathered will prove of unless proven otherwise”.

The evidence provided allows us to prove that the recording was made from the aforementioned establishment, with the cameras installed in it, without explanation credible has been given by the accused, on the obtaining and subsequent dissemination of the themselves.

“As can be seen, it is the same entrance to the premises (oval), which leads to the definitive conclusion that the recordings made and captured with the image of the complainant, were made, through the recording devices, of the Local called Bazar Susana, of which the one referred to as the denounced A.A.A. (...)”—folio nº 12 Report-complaint nº1 XXXX-XXXXXX-XX--.

III

In accordance with the evidence available in this moment of agreement to initiate the sanctioning procedure, and without prejudice to what

result of the investigation, it is considered that the respondent has proceeded to obtain "image" (personal data associated with an identifiable person) of a video-surveillance, proceeding to the dissemination to third parties outside the permitted cases.

The known facts could constitute an infraction, attributable to the claimed, for violation of art. 5.1f) GDPR.

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Likewise, the attached Report includes the "absence of cartel informative" where the purposes of the treatment are indicated and the person in charge before whom be able to exercise the rights recognized in the regulations in force, although the denounced in writing dated 10/08/19 states that it has proceeded to correct the described situation.

Article 83.5 RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with fines administrative fees of EUR 20,000,000 maximum or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual turnover of the previous financial year, 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; (...)"

When motivating the sanction, the following criteria are taken into account:

-the nature of the infraction, having obtained an image (personal data) of the recording system of the cameras installed in the Bazar Susana establishment,

proceeding to disseminate them without just cause (art. 83.2 a) RGPD).

-the intentionality or negligence of the infringement (art. 83.2 b) RGPD), since

the same are disseminated to identify an employee in functions of expertise of

products that could be fakes in their task of helping the Forces and

State security forces (art. 83.2 b) RGPD).

Notwithstanding the foregoing, it is taken into account that it is a small

coastal establishment without the volume of business canceling out

accredit, as well as the absence of previous infractions in the matter that concerns us,

to propose an initial sanction encrypted in the amount of €4,000 (Four Thousand Euros).

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Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START A PUNISHMENT PROCEDURE against the accused A.A.A.

(BAZAR SUSANA), with NIF ***NIF.1, for the alleged violation of art. 5.1 f) GDPR,

having obtained images from the video-surveillance device installed in the

commercial establishment that runs, infringement typified in art. 83.5 a) GDPR,

being punishable in accordance with art. 58.2 GDPR.

SECOND: APPOINT R.R.R. as instructor. and, as secretary, to S.S.S.,

indicating that any of them may be challenged, as the case may be, in accordance with

established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime

Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and his documentation, the documents obtained and generated by the General Subdirectorate for Data Inspection during the investigation phase, as well as the report of previous Inspection actions.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be €4,000 (Four Thousand Euros), notwithstanding whatever results from the instruction.

FIFTH: NOTIFY this agreement to the defendant A.A.A. (BAZAAR SUSANA), with NIF ***NIF.1, granting a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate.

In your brief of allegations you must provide your NIF and the number of the procedure that appears at the top of this document.

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in the www.aepd.es

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Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Common to Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event of that the sanction to be imposed was a fine, it may recognize its responsibility within of the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in

the present procedure. With the application of this reduction, the sanction would be established at €3,200 (Three Thousand Two Hundred Euros), resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of the present procedure, carry out the voluntary payment of the proposed sanction, which which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 3,200 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one

It is appropriate to apply for the acknowledgment of responsibility, provided that this acknowledgment of responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The pay volunteer of the amount referred to in the preceding paragraph may be made at any time prior to resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be established at 2,400 euros.

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts €3,200 or €2,400 indicated above, you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 0000 open to name of the Spanish Data Protection Agency at CAIXABANK Bank, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which is welcomed.

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Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the the date of the start-up agreement or, where applicable, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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: On February 4, 2020, the claimant has proceeded to pay the

SECOND

sanction in the amount of 2400 euros making use of the two reductions provided in the Startup Agreement transcribed above, which implies the recognition of the responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

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 art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the www.aepd.es

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information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified

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

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

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

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00360/2019, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to A.A.A. (BAZAR SUSANA).

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 as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common of the Public Administrations, the interested parties may file an appeal contentious-administrative 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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