

□ Procedure No.: PS/00213/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D. G. OF THE CIVIL GUARD - POSITION OF ***LOCATION.1 (in
hereinafter, the claimant) on 01/21/2020 filed a claim with the Agency
Spanish Data Protection. The claim is directed against SHOPPING
CENTER BAZAR (A.A.A.) with NIF ***NIF.1 (hereinafter, the claimed). The motives
on which the claim is based are, in short, that the claimant filed an official letter against
the owner of an establishment that has a video surveillance system and
It lacks informative posters in this regard, as well as forms with information
in terms of data protection available to customers.

SECOND: SECOND: Upon receipt of the claim, the Subdirector General
Data Inspection proceeded to carry out the following actions:

On 02/20/2020, the claim submitted was transferred to the defendant for analysis
and communication of the decision adopted in this regard. Likewise, he was required to
that within one month it send certain information to the Agency:

- Copy of the communications, of the adopted decision that has been sent to the
claimant regarding the transfer of this claim, and proof that
the claimant has received communication of that decision.
- Report on the causes that have motivated the incidence that has originated the
claim.
- Report on the measures adopted to prevent the occurrence of
similar incidents.

- Any other that you consider relevant.

There is no response from the respondent.

THIRD: On 07/07/2020, in accordance with article 65 of the LOPDGDD, the

Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed by the claimant against the respondent.

FOURTH: On 09/24/2020, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of article 13 of the RGPD contemplated in article 83.5.h) of the aforementioned Regulation, considering that the sanction that could correspond would be

WARNING.

FIFTH: Once the initiation agreement has been notified, the one claimed at the time of this

The resolution has not presented a written statement of allegations, for which reason the

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indicated in article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, which in section f)

establishes that in the event of not making allegations within the period established on the

content of the initiation agreement, it may be considered a proposal for

resolution when it contains a precise statement about the responsibility

imputed, reason why a Resolution is issued.

SIXTH: Of the actions carried out in this proceeding, they have been

accredited the following:

PROVEN FACTS

SINGLE: On 01/21/2020 it has entry in the AEPD Act-Complaint Inspection and Petition

Start of the claimant's procedure, filing a claim against the

claimed, motivated by the fact that this, owner of the commercial establishment and as

responsible for it has a video surveillance system lacking

informative posters, as well as forms with information on

data protection available to customers.

FOUNDATIONS OF LAW

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.

Yo

Law 39/2015, of October 1, on the Common Administrative Procedure of

the Public Administrations, in its article 64 "Agreement of initiation in the

procedures of a sanctioning nature", provides:

II

"1. The initiation agreement will be communicated to the instructor of the procedure, with

transfer of how many actions exist in this regard, and the interested parties will be notified,

understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the rules

regulators of the procedure so provide.

2. The initiation agreement must contain at least:

a) Identification of the person or persons allegedly responsible.

b) The facts that motivate the initiation of the procedure, its possible

rating and sanctions that may apply, without prejudice to what

result of the instruction.

c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the system of recusal of the same.

d) Competent body for the resolution of the procedure and regulation that attribute such competence, indicating the possibility that the presumed

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responsible can voluntarily acknowledge their responsibility, with the effects provided for in article 85.

e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopted during the same in accordance with article 56.

f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in If you do not make allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise statement about the responsibility imputed.

3. Exceptionally, when at the time of issuing the initiation agreement there are not sufficient elements for the initial qualification of the facts that motivate the initiation of the procedure, the aforementioned qualification may be carried out in a phase later by drawing up a List of Charges, which must be notified to the interested".

In application of the previous precept and taking into account that no

formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

The physical image of a person, in accordance with article 4.1 of the RGPD, is a personnel and their protection, therefore, is the subject of said Regulation. In article 4.2 of the RGPD defines the concept of "treatment" of personal data.

III

Article 12.1 of the RGPD states: "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".

The GDPR lists the categories of information that must be provided to a interested in relation to the treatment of your personal data in the cases in which that are collected from it (article 13) or obtained from another source (article 14).

Article 12.7 indicates that: "7. The information to be provided to the concerned under articles 13 and 14 may be transmitted in combination with standardized icons that allow to provide in an easily visible, intelligible way and clearly legible an adequate overview of the planned treatment"

Article 22 of the LOPDGDD establishes the specificities of the treatment of data for video surveillance purposes, indicating the following:

"1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of persons and goods, as well as their installations.

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

However, it will be possible to capture public roads to a greater extent when necessary to ensure the safety of goods or facilities

strategic or infrastructure linked to transport, without in any case

may involve capturing 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 threaten the integrity of persons, property or facilities. In that case, the images must be made available to the competent authority in within a maximum period of seventy-two hours from the date of knowledge of the existence of the recording.

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

4. 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 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 from its scope of application the treatment by a natural person of images that they only capture the interior of their own home.

This exclusion does not cover processing carried out by a security entity private that had been contracted for the surveillance of a home and had access to the images.

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

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

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

IV

In order that the duty of information provided for in article 12 of the RGPD is complied with in a concise and understandable manner for the affected party, the aforementioned Article 22 of the LOPDGDD provides for a system of "layered information". In this sense, the first layer, which must refer, at least, to 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 the RGPD, will be contained in a device, whose design and layout they must be such that the affected party has a clear view of the information available

about the processing of your personal data and where and how to find the information

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detailed. The importance of providing this information in advance arises, in particular, of recital 39 of the RGD, not being necessary to specify the location requires surveillance equipment; however, the context of surveillance.

Second layer information must be available in one place easily accessible to the affected person, be it an information sheet at a reception, cashier, etc., placed in a visible public space or in a web address, and must refer to the rest of the elements of article 13 of the RGD.

Article 13 of the RGD establishes the information that must be provided when personal data is obtained from the interested party, which is as follows:

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

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

b) the contact details of the data protection delegate, if any;

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

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

e) the recipients or categories of recipients of the personal data,

in your 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

adequacy decision of the Commission, or, in the case of transfers

indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph,

reference to 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

a) the period during which the personal data will be kept or, when 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

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

consent at any time, without affecting the legality of the

treatment based on 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 of not providing such data;

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f) the existence of automated decisions, including profiling, to referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the applied logic, as well as the importance and anticipated consequences of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said further treatment, information for that other purpose and any additional information relevant to the meaning of paragraph 2.

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

v

The claim is that the respondent does not have posters showing report on the presence of video surveillance cameras and on the identity of the responsible for data processing, as well as forms with information in matter of data protection available to customers so that people Interested parties may exercise, among others, the rights provided for in arts. 15 to 22 GDPR.

As proof of these statements, the claimant provided the evidence indicated in the “Facts” section, single point, of this Resolution.

The corrective powers of the Spanish Protection Agency

of Data, as a control authority, are established in article 58.2 of the RGPD.

Among them are the power to sanction with a warning - article

58.2.b)-, the power to impose an administrative fine in accordance with article 83 of the

RGPD -article 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

GDPR, when applicable, in a certain way and within a certain period

specified -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in the

Article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of

administrative fine.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation

with what is stated in Considering 148: "In the event of a minor infraction, or if the fine

likely to be imposed would constitute a disproportionate burden on a

natural person, instead of sanctioning by means of a fine, a

warning. However, special attention must be paid to the nature,

gravity and duration of the infringement, its intentional nature, the measures taken

to mitigate the damages and losses suffered, to the degree of responsibility or to any

pertinent previous infraction, to the way in which the control authority has had

knowledge of the infraction, compliance with measures ordered against the

responsible or in charge, adherence to codes of conduct and any other

aggravating or mitigating circumstance.

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In accordance with the evidence that is available and that has been accredited in the sanctioning procedure, the defendant has installed cameras of video surveillance without the necessary badge or informative poster, as well as of forms with information on data protection available to users clients and, it is considered that the exposed facts do not comply with what is established in the article 13 of the RGPD, for what they could suppose the commission of individual infractions typified in article 83.5 of the RGPD, which provides the following:

"Infringements of the following provisions shall be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

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

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

[...]."

For the purposes of the limitation period for infractions, the infraction indicated in the previous paragraph is considered very serious and prescribes after three years, in accordance with Article 72.1 of the LOPDGDD, which establishes that:

"According to the provisions of article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.

(...)

h) 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.

(...)»

For its part, article 74 of the aforementioned LOPDGDD provides:

«They are considered minor and the remaining infractions of merely formal character of the articles mentioned in sections 4 and 5 of the Article 83 of Regulation (EU) 2016/679 and, in particular, the following:

a) Failure to comply with the principle of transparency of information or the right to information of the affected party for not providing all the required information by articles 13 and 14 of Regulation (EU) 2016/679.

(...)»

In the present case, it is considered that the appropriate sanction to be imposed is the warning, in accordance with the provisions of article 58.2 b) of the RGPD, in relation to what is stated in Considering 148, cited above.

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In addition, the following have been taken into account, in particular:

items.

- That it is a micro-SME whose main activity is not linked to the treatment of personal data.
- That there is no recidivism, because the commission is not recorded, in the term of one year, of more than one infraction of the same nature.

viii

However, as already indicated in the initial agreement and in accordance with the established in the aforementioned article 58.2 d) of the RGPD, according to which each authority of control may "order the person responsible or in charge of processing that the processing operations comply with the provisions of this Regulation, where appropriate, in a certain manner and within a specified period [...]."

Therefore, the respondent is required to adopt the following measures:

- Certify having proceeded to the placement of the informative device in the video-monitored areas, locating this device in a sufficiently visible.
- Prove that you keep the information available to those affected.

refers to the aforementioned GDPR in accordance with article 13 of the GDPR.

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

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 SHOPPING CENTER BAZAR (A.A.A.), with NIF ***NIF.1, by

an infringement of article 13 of the RGPD, typified in article 83.5.h) of the RGPD,
a warning sanction.

SECOND: REQUIRE SHOPPING CENTER BAZAR (A.A.A.), with NIF ***NIF.1,

so that within one month from the notification of this resolution, prove:

- Having proceeded to place the informative device in the areas

video surveillance, locating this device in a sufficiently visible place.

-That it keeps the information to which it refers available to those affected

the aforementioned RGPD in accordance with article 13 of the RGPD.

THIRD: NOTIFY this resolution to SHOPPING CENTER BAZAR

(A.A.A.), with NIF ***NIF.1.

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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 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 period of

month 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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the
LPACAP, the firm resolution may be provisionally suspended in administrative proceedings
if the interested party expresses his intention to file a contentious appeal-
administrative. If this is the case, the interested party must formally communicate this
made by writing to the Spanish Agency for Data Protection,
introducing him to
the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other
records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also
must transfer to the Agency the documentation that proves the effective filing
of the contentious-administrative appeal. If the Agency were not aware of the
filing of the contentious-administrative appeal within two months from the
day following the notification of this resolution, it would end the
precautionary suspension.

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