

□ Procedure No.: PS/00471/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated September 10, 2020, entered this Agency

Spanish Data Protection, a document presented by A.A.A. (hereinafter the
claimant), through which he makes a claim against AMPUDIA DIAZ, S.L. with
NIF B33872508 (hereinafter, the claimed one), for the installation of a
video surveillance installed in *** ADDRESS.1, there are indications of a possible
Non-compliance with the provisions of the data protection regulations
personal.

The claimant states that the cafeteria, managed by the respondent, has a
camera capable of capturing the public thoroughfare, as well as inside the premises, without
there is a video surveillance zone sign.

“(…) That the camera directed to the outside records all the people who pass through the
sidewalk, as well as the users of the terrace on the same sidewalk but separated from the
facade, so that to transit you have to pass between the facade where the
camera and the terrace, the images being recorded in close-ups, each time
that passes in front, being a necessary step when traveling along said sidewalk. (…)”
It provides a photographic report of the camera on the terrace and the possible angle of
catchment.

SECOND: Prior to the acceptance of this claim for processing, it is
transferred the claimed, in accordance with the provisions of article 65.4 of the Law
Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), being notified on the 13th of

October 2020, with no response to date in this regard.

THIRD: The claim was admitted for processing by means of a resolution of 14

December 2020.

FOURTH: On March 16, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of articles 5.1.c) and 13 of the RGPD, typified in article 83.5

of the GDPR.

The electronic notification of the Initiation Agreement sent to the respondent was expired,

so it was proceeded to reiterate it by postal mail, being received with

dated July 15, 2021 as it appears on the proof of delivery issued by the service

of mails.

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28001 – Madrid

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2/8

There is no evidence at the present time that a brief of allegations has been submitted to the

same, for which what is stated in article 64 of Law 39/2015, of

October 1, of the Common Administrative Procedure of the Administrations

Public Companies (hereinafter, LPACAP), which in section f) establishes that in the event of

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 pronouncement about the imputed responsibility, for which reason

to issue resolution.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: On September 10, 2020 you have entry to this Agency claim against AMPUDIA DIAZ, S.L for having installed a system of video surveillance in a cafeteria that could be capturing images of public roads, as well as inside the premises, and that it does not have an informative poster of the existence of that system.

SECOND: Photographs of the location of the camera are provided.

THIRD: The transfer of the claim that was made to the claimed party was duly notified on October 13, 2020, without any record in this Agency answer.

FOURTH: The electronic notification of the Home Agreement sent to the claimed was expired, so it was reiterated by mail, being received on July 15, 2021 as shown on the proof of delivery issued by the postal service, without, to date, having received in this Agency allegations by the respondent.

FOUNDATIONS OF LAW

I

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 process.

II

The physical image of a person under article 4.1 of the RGPD is personal data and its protection, therefore, is the subject of said Regulation. Article 4.2 of the GDPR defines the concept of “treatment” of personal data.

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3/8

Article 22 of the LOPDGDD establishes the specificities of data processing

for video surveillance purposes, indicating the following:

"one. 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 facilities.

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 the public road in an extension superior when necessary to guarantee the security of goods or strategic installations or infrastructures linked to transport, without

In no case may it involve capturing images of the interior of a home private.

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 data controller must keep available to

those 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

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4/8

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. Out of

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.”

III

In accordance with the foregoing, the processing of images through a

video surveillance system, to be in accordance with current regulations, must comply with

the following requirements:

- Respect the principle of proportionality.

- When the system is connected to an alarm center, you can only

be installed by a private security company that meets the requirements

contemplated in article 5 of Law 5/2014 on Private Security, of April 4.

- The video cameras will not be able to capture images of the people who

are outside the private space where the security system is installed.

video surveillance, since the processing of images in public places can only be

carried out, unless there is government authorization, by the Forces and Corps of

Security. Nor can spaces owned by third parties be captured or recorded without

the consent of their owners, or, as the case may be, of the persons who are

find.

This rule admits some exceptions since, on some occasions, for the protection

of private spaces, where cameras have been installed on facades or inside,

it may be necessary to guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in the articles 12 and 13 of the RGPD, and 22 of the LOPDGDD, in the terms already indicated.
- The person in charge must keep a record of treatment activities carried out under its responsibility, including the information to which it makes reference article 30.1 of the RGPD.

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5/8

- The installed cameras cannot obtain images from private space of third party and/or public space without duly accredited justified cause, nor can affect the privacy of passers-by who move freely through the area. No this allowed, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without just cause.
- In no case will the use of surveillance practices be admitted beyond the environment object of the installation and in particular, not being able to affect the spaces surrounding public, adjoining buildings and vehicles other than those accessing the guarded space.

In summary and to facilitate the consultation of interested parties, the Spanish Agency for Data Protection offers through its website [<https://www.aepd.es>] access to the legislation on the protection of personal data, including the RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”), as well as the Guide on the use of video cameras for security and other purposes, as well as the Guide for compliance with the duty to inform (both available in the section “Guides and tools”).

It is also of interest, in the event of carrying out low-risk data processing, the facilitates free tool (in the “Guides and tools” section), which, through specific questions, allows to assess the situation of the person in charge with respect to the treatment of personal data that it carries out, and where appropriate, generate various documents, informative and contractual clauses, as well as an annex with measures guidelines considered minimum.

IV

In the present case, the claim was filed because the respondent has installed a video surveillance system in a cafeteria that could be capturing images of the public road, as well as inside the premises, and that it does not have an informative poster of the existence of that system.

As proof of these manifestations, the evidence indicated in the “Facts” section of this agreement.

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Between they have the power to issue 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 controller or processor that the treatment operations comply with the provisions of the RGPD, when

appropriate, in a certain way and within a specified period -article 58. 2

d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of a fine

administrative.

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6/8

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In accordance with the evidence available and which has not been

distorted during the sanctioning procedure, the defendant has installed a

video surveillance system in the establishment of your property that could be

capturing images of the public thoroughfare, as well as inside the premises, and that

has an informative poster of the existence of this system, for which it is considered

that these facts violate the provisions of articles 5.1.c) and 13 of the RGPD, therefore

that could entail the commission of two offenses 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.

(...)»

SAW

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the RGPD. Therefore, It is appropriate to graduate the sanction to be imposed in accordance with the criteria established by the article 83.2 of the RGPD, and with the provisions of article 76 of the LOPDGDD, regarding to section k) of the aforementioned article 83.2 RGPD:

In the initial assessment, the following have been considered:

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7/8

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The nature of the offense by having a video surveillance system that is oriented towards public transit areas without just cause, trying to data of identifiable natural persons (art. 83.5 a) RGD.

The intentionality or negligence of the infraction, the camera is oriented to the outside of your establishment (83.2.b) RGD).

- There is no information poster indicating the person responsible for the treatment and where the interested parties can go to exercise their rights recognized in the GDPR.

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 AMPUDIA DIAZ, S.L. with NIF B33872508, for an infringement of article 5.1.c) of the RGD, typified in article 83.5 of the RGD, a fine of €1,000 (Thousand euros).

SECOND: IMPOSE AMPUDIA DIAZ, S.L. with NIF B33872508, for a infringement of article 13 of the RGD, typified in article 83.5 of the RGD, a fine €500 (Five hundred euros).

THIRD: ORDER AMPUDIA DIAZ, S.L. with NIF B33872508 which, by virtue of article 58.2.d) of the RGD, within ten days, adopt the following measures:

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certifies having proceeded to the removal of the camera from the current place, or to the reorientation of it towards its particular area.

certifies having proceeded to the placement of the informative device in the video-monitored areas or to complete the information offered therein (you must identify, at least, the existence of a treatment, the identity of the responsible and the possibility of exercising the rights provided for in said precepts), locating this device in a sufficiently visible place, both in open and closed spaces.

certifies that it keeps available to those affected the information to which it is refers to the aforementioned RGPD.

FOURTH: NOTIFY this resolution to AMPUDIA DIAZ, S.L. with NIF B33872508.

FIFTH: 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 the LPACAP, within the voluntary payment period established in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005, dated 29 July, in relation to art. 62 of Law 58/2003, of December 17, through its income, indicating the NIF of the sanctioned and the procedure number that appears in

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the heading of this document, in the restricted account number ES00 0000 0000 0000 0000 0000, opened on behalf of the Spanish Agency for Data Protection in the banking entity CAIXABANK, S.A.. Otherwise, it will be processed collection in 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.

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/>], 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

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