

□ Procedure No.: PS/00099/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: DG OF THE CIVIL GUARD. - BALAGUER COMPANY. MARKET STALL

PROSECUTOR OF ***LOCALITY.1 (*hereinafter, the claimant) dated February 18

2020 filed a claim with the Spanish Data Protection Agency. The

claim is directed against A.A.A. (XXXXX) with NIF ***NIF.1 (hereinafter, the

reclaimed). The reasons on which the claim is based are "installation of a

video-surveillance" without having an informative poster adjusted to the regulations in force.

A copy of the Report filed by the Police Forces and Bodies is provided.

State Security, indicating the offenses committed at the scene

(doc. no. 1).

SECOND: On June 9, 2020, the Director of the Spanish Agency for

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

alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the

GDPR.

THIRD: The database of this body was consulted on 09/04/20, no

There is no allegation regarding the facts that are the subject of the complaint.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-

rector of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

In the present case, we proceed to examine the Complaint transferred by the Guardia Civil to this Agency on 02/18/20 by means of which it is transferred as a main fact lead the following:

"installation of video-surveillance system" without an information poster adjusted to the regulations in force.

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The RGPD obliges data controllers to offer data subjects more information about the treatments that are carried out and the way to exercise the Rights. All those responsible must comply with this obligation of transparency, regardless of its size as an organization.

Article 22.4 LOPDGDD 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 site 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”.

Likewise, it must have an informative form(s) available to any
any customer who may require it inside the establishment, so that he can
fill it in if required, being able to consult it on the website of this organization.
nismo www.aep.es in the Video-surveillance Section "forms and other models".

III

In accordance with the evidence available in this proceeding,
sanctioning procedure, it is considered that the defendant has a video system
vilgancia in its commercial establishment, although it does not have the obligatory sign in-
training indicated by the person in charge of the treatment and the way to exercise the rights
rights recognized in the regulations in force.

Article 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 corresponding legal requirements,
teeth the facts verified by those are collected will prove them except
prove the contrary".

In such a way that the absence of an informative poster in the state is accredited.
denounced establishment, when such an extreme was verified by the acting force displaced
given to the scene of the events, which determines that it does not report on the responsible
ble, nor the way to exercise the rights regulated in articles 15-22 RGPD.

The known facts constitute an infraction, attributable to the claimant.
mado, for violation of the content of art. 13 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.

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to a maximum of 4% of the total global annual turnover of the financial year

above, opting for the highest amount:

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

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 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. must, however, lend

special attention to the nature, seriousness and duration of the infringement, its character

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

liability or any relevant prior violation, to the manner in which the authority

control authority has become aware of the infraction, compliance with measures

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

duct and any other aggravating or mitigating circumstance.”

A photograph must be provided with date and time that proves compliance with

what is established, that is, to have an informative poster in a visible area indicating the

responsible for the file (by way of example A.A.A. and the address to which to address),

before which to be able to exercise, where appropriate, the rights recognized in the RGPD.

Likewise, you must keep the documentation inside the establishment

in an orderly manner for display if required by the acting force, to avoid

thereby creating new administrative complaints in the event of new inspections.

tions of the establishment in question.

Remember for the appropriate legal purposes, that the lack of collaboration with this

Agency may lead to the opening of a sanctioning procedure of a

economic, under the terms of art. 72.1 letter o) LOPDGDD.

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 the accused party A.A.A. (XXXXX), with NIF ***NIF.1, by

an infringement of Article 5.1.c) of the RGD, typified in Article 83.5 of the RGD,

a warning sanction.

SECOND: REQUIRE the accused to legalize the system by placing a sign

informative duly approved, accrediting such extreme to this Agency to the

appropriate legal effects.

THIRD: NOTIFY this resolution to A.A.A. (XXXXX) and REPORT the

result of the actions D.G. OF THE CIVIL GUARD. - COMPANY OF

BALAGUER. PROSECUTOR POSITION OF ***LOCALITY.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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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