

□ Procedure No.: PS/00033/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On November 6, 2020, he entered this Agency

Spanish Data Protection, a document presented by A.A.A. (hereinafter, the
claimant), through which he makes a claim against ARRIVEDA DAMAR S.L.

with CIF B87440079 (hereinafter, the claimed one), for the installation of a
video surveillance installed on the street *** ADDRESS.1, there are indications of a possible
Non-compliance with the provisions of the data protection regulations
staff.

The reasons that support the claim and, where appropriate, the documents provided
by the claimant are the following:

“The company ***EMPRESA.1 has placed surveillance cameras on the street
***ADDRESS.1, where you have the main entrance and on the street ***ADDRESS.2,
where you have a second smaller entry. There are 4 cameras in total. There is not
no poster where the recording of the images is indicated. Also from a
from the cameras of ***ADDRESS.2, as it is so far from the door that in theory
watch, our portal through which we access the houses is perfectly recorded,
so that with those images they have us under surveillance and they know when we go out,
we enter, we go on vacation, etc. (...)”

Photo report has been provided.

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 electronically dated November 25, 2020, without any response from this Agency of the claimed.

THIRD: The claim was admitted for processing by resolution of January 26 of 2021.

As a result of the research actions carried out, it is reached the determination that the person responsible for the processing of personal data is ARRIVEDA DAMAR S.L.

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ARTO: On April 12, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the C/ Jorge Juan, 6
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alleged infringement of articles 5.1.c) and 13 of the RGPD, typified in article 83.5 of the GDPR.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, it stated that "The cameras in no way they capture, neither in all nor in part, the portal through which he accesses his home, (...).

The location of the camera delimits only the area of the side entrance of the premises, and its sole function is to protect our customers and employees when they leave the local; the safety of employees of security companies that carry out transportation of funds and make use of the output; or its use after finishing the processes

collection.” (...)

The sign above the side door itself has been repeatedly torn from the itself, as can be seen on it, since it has even raised the own door painting. To avoid this, the cartel is currently located well above the upper limit of the door, to prevent its theft.”

Provides two photographs of what the camera captures, in which you can see the whole width of the sidewalk and the cars parked next to it along the facade of the establishment, as well as the roadway.

Attach a third photograph, in which there is only an informative poster of video-surveillance area with your data, without it being possible to identify the place where was previously located, nor where it is currently located.

SIXTH: On May 19, 2021, the instructor of the procedure agreed to the opening of a period of practice of tests, taking for reproduced, for purposes evidence of the claim filed by the claimant and its documentation, the documents obtained and generated by the Subdirector General for Inspection of Data and allegations presented by the respondent.

SEVENTH: On May 21, 2021, a resolution proposal was formulated, proposing to impose on the claimed party the sanction of €4,000 (Four thousand Euros) for the alleged infringement of article 5.1.c) of the RGPD, and €2,000 (Two thousand Euros) for the alleged infringement of article 13 of the RGPD.

In this proposal, a period of 10 days was granted so that the person claimed could allege what he considers in his defense as well as present the documents and information that it considers pertinent, in accordance with article 89.2 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP).

EIGHTH: There is no evidence that, at the date of writing this resolution, there

had input in this Agency allegations to the Resolution Proposal, which
duly notified on May 24, 2021.

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

In this proceeding, the following are considered proven facts:

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FACTS

FIRST: On November 6, 2020, it entered this Spanish Agency

of Data Protection a document that shows that the claimed party has

installed four video surveillance cameras that capture the entire width of the sidewalk and

cars parked next to it along the front of the establishment, as well

like the road.

SECOND: The respondent has provided a photograph that only contains a

Informative poster of the video-monitored area with the data of the person claimed, without it being

possible to identify where it was previously located, or where it is

currently located.

THIRD: The person in charge of the video surveillance system is ARRIVEDA DAMAR S.L.

with CIF B87440079.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD 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.

Article 22 of the LOPDGDD establishes the specificities of data processing 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 people and property, 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 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.

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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 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.”

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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.

- 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

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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

four video surveillance cameras that capture the entire width of the sidewalk and cars

parked next to it along the façade of the establishment, as well as the

road.

Likewise, the information poster installed does not meet the requirements

established in the data protection regulations.

As proof of these statements, the claimant provided 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 RGD. Among 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 RGD -article 58.2 i)-, or the power to order the controller or processor that the treatment operations comply with the provisions of the RGD, 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 RGD, 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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In accordance with the evidence that is available and that has been accredited with the photographs provided by the defendant, he has installed a video surveillance system that could be capturing images from third parties, and also, the informative poster of the existence of said cameras does not meet the requirements arranged in the data protection regulations, for which it is considered that these facts violate the provisions of articles 5.1.c) and 13 of the RGD, which implies the commission of offenses typified in article 83.5 of the RGD, which provides the

Next:

"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,

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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 infractions indicated in the previous paragraph are considered very serious and prescribe 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. So,

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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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) RGPD.

The intentionality or negligence of the infraction, the cameras are oriented

to the outside of your establishment (83.2.b) RGPD).

- Not having an informative poster indicating the data controller

and where the interested parties can go to exercise their recognized rights.

two in the GDPR, prevents those affected from exercising it.

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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 ARRIVEDA DAMAR S.L., with CIF B87440079, for a

infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, a fine of €4,000 (four thousand euros).

SECOND: IMPOSE ARRIVEDA DAMAR S.L., with CIF B87440079, for a infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a fine €2,000 (Two thousand euros).

THIRD: ORDER ARRIVEDA DAMAR S.L., with CIF B87440079, which, by virtue of article 58.2.d) of the RGPD, within ten days, adopt the following measures:

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certify having proceeded to withdraw the cameras from the places

current, or to the reorientation of the same towards their particular area.

certifies having proceeded to the placement of the informative device in the

video-monitored areas or to complete the information offered in the same

(must identify, at least, the existence of a treatment, the identity

of the person in charge and the possibility of exercising the rights foreseen in

said precepts), locating this device in a sufficiently

visible, both in open and closed spaces.

certifies that it keeps the information available to those affected

referred to in the aforementioned RGPD.

FOURTH: NOTIFY this resolution to ARRIVEDA DAMAR S.L.

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 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.

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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.

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Director of the Spanish Data Protection Agency

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