

Procedure No.: PS/00348/2018

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before

SANCHEZ JOYEROS TEMPO 2016 SL, by virtue of a claim filed by

A.A.A. (hereinafter, the claimant) / on its own initiative and based on the following:

BACKGROUND

FIRST: On 06/18/2018, the Spanish Agency for the Protection of

Written data from D. A.A.A. (hereinafter the complainant), in which he denounces

SANCHEZ JEWELERS TEMPO 2016, S.L. (hereinafter SANCHEZ JOYEROS), by

whereby it states the existence of a video surveillance camera installation in

the aforementioned establishment on the entrance to it capturing images of people

that circulate on the sidewalk and possibly from the vehicles that circulate on the road,

violating the right to privacy.

Along with your written complaint, provide a photograph of the location of the camera.

SECOND: SANCHEZ JOYEROS was required by this Agency on 08/06/2018 to

that accredited in the reference file ***FILE.1, the documentation

certifying that the installation of the camera was in accordance with the regulations of

data protection and that it was duly signposted.

SANCHEZ JOYEROS in brief of allegations of 09/12/2018 and 10/04/2018

replied to this body providing a certificate from Alexma, S.A. installation company

of the recording system of the establishment, resolution on recognition of low

in the special regime for self-employed or self-employed workers

sole administrator of the company; letter from the sole administrator in which

informed of the cancellation of the company's activity, providing form 036 of cancellation

in the activity.

However, after analyzing the response and documentation offered by the company consulted the RMC and Axesor, it is confirmed that the company is still active and that in telephone call made to the establishment where the outdoor camera denounced, the clerk who attends to the acting inspector informed that the commercial establishment is open, which shows that the establishment continues to operate and has activity.

THIRD: On 12/03/2018, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure for the presumed infraction of the article 5.1 c) of the RGPD, in accordance with the provisions of article 58 section 2 of the same norm, considering that the sanction that could correspond would be WARNING, without prejudice to what may result from the investigation.

FOURTH: Proof of diligence of the instructor of 02/06/2019 in which it is stated that the sole administrator of the entity SANCHEZ JOYEROS TEMPO 2016, S.L., has put in telephone contact to declare that the aforementioned business is discharged

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as already confirmed in the response to the request for information from the Service of Inspection; that there may be some confusion when using the same denomination new business located in the commercial premises of which he was administrator and that, However, as soon as possible, it will provide proof of the elimination of the camera placed on the facade of the premises.

In an e-mail of the same date, he provided a photograph of the facade of the premises where he no longer the camera appears.

Of the actions carried out in this proceeding, there have been

accredited the following proven facts:

PROVEN FACTS

FIRST: On 06/18/2018, the claimant's letter was entered in the AEPD

denouncing SANCHEZ JOYEROS, declaring the existence of a security camera

video surveillance on the facade of the aforementioned establishment focusing on the entrance to the

himself capturing images of people walking on the sidewalk and possibly of

vehicles circulating on the road, violating the right to privacy. Contribute

camera location photography.

SECOND: The administrator of the company, who contributed the cancellation in the special regime

of self-employed or self-employed workers and the official form 036 of low in the

activity, in an email dated 02/06/2019 has provided a photograph in which the

removal of the anterior chamber.

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 as established in art. 47 of the Organic Law 3/2018, of

December 5, Protection of Personal Data and guarantee of rights

(hereinafter LOPDGDD), the Director of the Spanish Agency for

Data Protection is competent to resolve this procedure.

The third transitory provision of the new LOPDGDD establishes: "Regime

transitory procedures:

II

1. The procedures already initiated at the entry into force of this organic law shall be

shall be governed by the above regulations, unless this organic law contains provisions

more favorable for the interested party.

Article 63.2 of the LOPDGDD indicates: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

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It is necessary to point out some of the requirements that the treatment of images through a video surveillance system to be in accordance with the regulations in force:

III

- 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 4 april.
- The video cameras will not be able to capture images of the people who are outside the private space since the treatment of images in public places can only be carried out, where appropriate, by the Forces and Security forces. Spaces cannot be captured or recorded either. property of third parties without the consent of their owners, or, where appropriate, of the people who are in them.
- The duty to inform those affected provided for in article

12 of the RGPD 2016/679, of April 27, 2016, in the terms referred to both in the aforementioned article, as well as in articles 13 and 14 of said regulation, resulting of application -by not contradicting the provisions of the aforementioned Regulation-, the manner provided for in article 3 of Instruction 1/2006, of November 8, of the Spanish Agency for Data Protection, on Data Processing Personal for Surveillance Purposes through Camera Systems or Video cameras (Instruction 1/2006, of November 8, of the Spanish Agency Data Protection).

Specifically, it must:

1. Place at least one informative badge in the video-monitored areas

located in a sufficiently visible place, both in open and closed spaces.

In accordance with the provisions of articles 13 and 14 of the RGPD, in the distinctive aforementioned information must identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided for in these provisions.

2. Keep available to those affected the information referred to in the quoted GDPR.

The defendant is charged with the violation of article 5 RGPD, Principles relating to treatment, which provides the following:

IV

"1. The personal data will be:

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

Also Organic Law 3/2018, of December 5, on Data Protection

Personal and Guarantee of Digital Rights (LOPDGDD), in its article 22,

Treatment for video surveillance purposes, in its sections 1, 2, 4 and 5 establishes that:

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"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 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.

(...)

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.

(...)

The denounced facts take the form of the installation of a security camera video surveillance at the entrance of the establishment capturing images of people who circulating on the sidewalk and possibly from the vehicles that circulate on the road, violating the right to privacy.

It should be noted that the sole administrator of the company provided a resolution on recognition of leave in the special regime of self-employed workers own or self-employed, providing the official form 036 of withdrawal from the activity.

However, he has stated that there has been a certain misunderstanding by being the same denomination used by the new business located in the commercial premises of which he was an administrator, having provided a photographic report in which the camera that has been the cause of this procedure and that was installed in the upper part of the facade of the premises.

Article 83 of the RGPD, General conditions for the imposition of fines administrative, in its section 5, letter a) states that:

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"5. Violations of the following provisions will be sanctioned, in accordance

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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”.

And article 72 of the LOPDGDD, Infractions considered very serious, establishes:

"1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in particularly the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.

(...)”

However, article 58.2 of the RGPD provides the following: “Each authority

of control will have all the following corrective powers indicated below:

continuation:

(...)

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of this Regulation;

(...)”

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates

in its article 58.2 b) the possibility of going to the warning to correct the

processing of personal data that do not meet your expectations. About

when it is appropriate to opt for one or the other route, the application of article 83 of the RGPD

or the corrective measure of warning of article 58.2.b), the rule itself in its

Recital 148 establishes the following:

“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 sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

It should be noted that the defendant has proven that the camera installed

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and that captured images of the sidewalk has been eliminated, providing documentary evidence of the manifested.

In the same way, the adoption of any specific measure is not urged to take, having proven the adoption of the appropriate measures to put an end to the infraction revealed and its adaptation to the new principles that it has GDPR of course.

To conclude, taking into account the absence of intentionality, the absence of damages, the behavior of the claimed collaborating with the Agency in the solution of the incidence produced and the measures adopted mitigate more if There is guilt in the present case, for which a warning is appropriate.

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 SANCHEZ JOYEROS TEMPO 2016, S.L., with NIF

A81479107, for an infringement of article 5.1 c) of the RGPD, sanctioned in accordance with the provided in article 83.5 of the aforementioned RGPD and, qualified as very serious in article 72.1 a) of the LOPDGDD, a sanction of WARNING in accordance with the provided for in article 58.2.b) of the RGPD.

SECOND: NOTIFY this resolution to SANCHEZ JOYEROS TEMPO

2016, S.L., and, in accordance with art. 77.2 of the RGPD, INFORM the claimant, D. A.A.A., about the outcome of the claim.

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.

114.1 c) of the LPACAP, 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-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->

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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

Director of the Spanish Data Protection Agency

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