

□ Procedure No.: PS/00378/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the claimant) on July 8, 2020 filed
claim before the Spanish Data Protection Agency. The claim is
directed against ALAVA NORTE, S.L. with CIF B01581412 (hereinafter, the claimed).

The grounds on which the claim is based are succinctly as follows:

“In the two basements of my building they have expanded a games room, and they have installed
do three 360° video surveillance cameras on the facade of the building without asking
community permission. From what I have read, I understand that they do not have the legitimacy to install
that type of cameras, if it is not about public buildings, police or in cases, banks.

The cameras focus on the sidewalk of the street, as well as the access door to the building and the
facade of the building” (folio nº 1).

Along with the claim, provide documentary evidence that proves the presence of the
denounced system (Annex I).

SECOND: On 07/17/20, the claim is TRANSFERRED to the claim
mada so that it manifests what it considers opportune in relation to the facts.

THIRD: On 08/07/20, a response was received from the complainant, sending us
the address of the installer, without any clarification having been made in this regard.

FOURTH: On January 14, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the defendant, with
glo to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-
Common Administrative Procedure of Public Administrations (hereinafter, LPA-

CAP), for the alleged infringement of Article 5.1.c) of the RGD, typified in Article

83.5 of the GDPR.

FIFTH: The database of this Agency consulted on 03/03/21 has not been

received any response in this regard and it has not been proven that the situation has been regularized described.

SIXTH: On 03/04/21, a Resolution Proposal is issued, agreeing to propose

a sanction encrypted in the amount of €4,000, for the continued infringement of art. 5.1 c)

RGPD, infringement typified in art. 83.5 GDPR.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

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PROVEN FACTS

First. The facts are described in the claim dated 07/08/20 as follows

way:

“In the two basements of my building they have expanded a games room, and they have installed do three 360° video surveillance cameras on the facade of the building without asking community permission. From what I have read, I understand that they do not have the legitimacy to install that type of cameras, if it is not about public buildings, police or in cases, banks.

The cameras focus on the sidewalk of the street, as well as the access door to the building and the facade of the building” (folio nº 1).

Along with the claim, provide documentary evidence that proves the presence of the denounced system (Annex I).

Second. He is accredited as the main person responsible for the installation of the cameras.

ras Alava Norte S.L.

Third. It is proven that the defendant has several exterior cameras

that are oriented towards the public transit area, proceeding to "process data" of

unjustified manner, beyond the mere security of the recreational establishment.

Fourth. The respondent has not accredited having an informative form(s) available.

position of those affected who may require it in their case.

Fifth. The respondent does not prove the measures adopted to comply with the duty of

information, not providing photography informative poster homologated to the regulations in

vigor.

FOUNDATIONS OF LAW

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

control, 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 re-

solve this procedure.

II

In the present case, the claim dated 07/08/20 is examined by me-

gave from which the following is transferred:

"In the two basements of my building they have expanded a games room, and they have installed

do three 360° video surveillance cameras on the facade of the building without asking

community permission. From what I have read, I understand that they do not have the legitimacy to install

that type of cameras, if it is not about public buildings, police or in cases, banks.

The cameras focus on the sidewalk of the street, as well as the access door to the building and the

facade of the building" (folio nº 1).

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It should be remembered that individuals are responsible for ensuring that the systems more installed comply with current legislation, proving that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory sign informative, indicating the purposes and responsible for the treatment in your case of the data of a personal nature.

They will be installed at the different entrances to the video-monitored area and, in a visible place, one or more signs that inform that you are accessing a video-monitored area.

In any case, the cameras must be oriented towards the particular space, avoiding intimidating neighboring neighbors with this type of device, as well as controls lar transit areas of the same without just cause.

With this type of device it is also not possible to obtain image(s) of space public service, as this is the exclusive competence of the Security Forces and Corps of the State.

The recording system will be located in a guarded place or with restricted access.

Only authorized personnel will access the recorded images, who must enter a user code and a password. Once the system is installed, it is recommended the regular change of the password, avoiding the easily deductible ones.

It should be remembered that even in the case of a "simulated" camera, the

It must be oriented towards private space, since it is considered that this type of devices can affect the privacy of third parties, who are intimidated by the same in the belief of being the object of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining

images of public space, outside the cases allowed in the regulations.

The camera(s) cannot focus on public roads. If it is necessary to protect the

entrance of a house or that of the garage or establishment, the installation must pass the judg-

proportionality, suitability and minimum intervention.

III

In accordance with the evidence available in this proceeding,

penalty, it is considered that the defendant has a camera system of

video-surveillance that is oriented towards public/private space without just cause

gives.

The installed cameras correspond to a dome model that allows obtaining

widely images (personal data), being located on the front of the

facade of the establishment oriented towards public transit area, without explanation

no tion has been given about them.

Private security companies or individuals who want to install security cameras

surveillance will have to do it in private spaces and, furthermore, they will not be able to capture images

genes of public spaces.

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Both the Organic Law on Data Protection and Guarantee of Digital Rights

(LOPDGDD) and the Private Security Law coincide in this regard. Specifically-

Thus, the regulations on private security state the following in its article 42:

“Cameras or video cameras may not be used for private security purposes

to take images and sounds of roads and public spaces or public access except in the cases and under the terms and conditions provided for in its specific regulations, prior administrative authorization by the competent body in each case.

The known facts constitute an infraction, attributable to the defendant, for violation of the content of art. 5.1 c) GDPR.

In this case, it is the responsibility of the data controller to prove the legality quality of the system, providing everything necessary so that, in the opinion of this body, the The same does not affect outside the cases allowed the right of third parties.

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. to a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount:

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

When motivating the sanction, the following is taken into account:

-the nature, seriousness and duration of the offence, taking into account the nature nature, scope or purpose of the treatment operation in question as well as the number of affected parties and the level of damages they have suffered (art. 85.2 a) RGPD).

- The intention or negligence in the infringement (art. 85.2 b) RGPD).

Based on the foregoing, a penalty of €4,000 is proposed, penalty located on the lower scale for this type of offence.

The defendant must provide all the necessary documentation to clarify

the facts (eg number of cameras, screen printout with date and time, if available)

ne of poster, placement plan, authorization of the Board of owners, etc.); the same-

It must be sufficiently explicit to clarify, in the opinion of this body, the law

quality of the entire installed system.

It is recalled that not meeting the requirements of this Agency may lead to the

opening of a new sanctioning procedure for the infringement of art. 72 paragraph

1st letter o) LOPDGDD when “obstructing the inspection work”.

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Among the corrective powers contemplated in article 58 of the RGPD, in its section 2

d) it is established that each control authority may “order the person in charge or

of the treatment that the treatment operations comply with the provisions

of this Regulation, where appropriate, in a certain way and within

a specified period...”. The imposition of this measure is compatible with the sanction

consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

In view of the foregoing, the following is issued

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 entity ALAVA NORTE, S.L., with CIF B01581412, for a

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

fine of 4,000 euros (four thousand euros).

SECOND: NOTIFY this resolution to the entity ALAVA NORTE, S.L.

THIRD: 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 Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the 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

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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/](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

Director of the Spanish Data Protection Agency

938-131120

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