

□ Procedure No.: PS/00306/2019

938-051119

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: On 10/15/2018, it entered this Spanish Agency for  
Data Protection a letter presented by COM. OF PROP. RESIDENTIAL  
CAMPUS \*\*\*NUMBERS.1 (\*hereinafter, the claimant), through which he formulates  
claim against CAFE BAR NINA (Nina Cb), (hereinafter, the defendant), for the  
installation of a video surveillance system installed in arcades \*\*\*ADDRESS.1,  
There are indications of a possible breach of the provisions of art. 5.1 c)  
GDPR.

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

“presence of a camera not authorized by the Community of owners that  
could affect the rights of tenants and third parties without just cause” (folio nº 1).

Documentary evidence is attached (Doc. nº1) that accredits the installation of the  
video-surveillance camera on top of a pillar presumably oriented towards the area  
of access of your establishment.

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). The result of this action is  
describes below.

“No response has been received in this regard”

THIRD: The claim was admitted for processing by resolution dated

06/11/2018.

FOURTH: Consulting the database of this body, there is a precedent associated

linked to the procedure with reference number \*\*\*REFERENCE.1, which ended with

the following statement:

“WARN (\*\*\*REFERENCE.1) to Ms. A.A.A. and D.B.B.B. as responsible

of the video surveillance system installed in the establishment called “BAR

NINA” located at \*\*\*ADDRESS.1, in accordance with the provisions of article 45.6 of

[www.aepd.es](http://www.aepd.es)

C/ Jorge Juan, 6

28001 – Madrid

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/8

the LOPD, in relation to the complaint for infringement of article 6.1 of the LOPD, typified

as serious in article 44.3.b) of the aforementioned Organic Law”

FIFTH: When the database of this organization was consulted on 01/20/20, there is no

any allegation in relation to the facts reported by this body.

SIXTH: On 01/20/20, the collaboration of the Armed Forces and

State Security Corps (National Police-Granada) so that they can be transferred to the

place of the facts, prove the same, as well as if the establishment shows

activity, carrying out all the necessary inquiries in this regard.

SEVENTH: On 02/13/20, an Official Letter from the Police-Unit General Directorate was received.

Territorial Private Security -- (Granada) who travels to the scene of the events

noting the following:

-That the owner of the “Nina” Cafeteria is Sociedad Hermanos Molina S.L.

with contact email \*\*\*EMAIL.1

-That it does not have an information poster, stating the owner "that

It has recently carried out reforms and that it does not know where it has left it".

-That it does not have a form available to customers in the event that

these require it.

-That the premises have a total of six cameras, two outside that collect

access to the business, although the one located on the left outside if taken as

reference the exit of the premises does not work due to a technical problem (frames nº 1 and two).

-That there are four cameras working inside the premises, aimed at

the entrance, bar, kitchen and tables (Frames 3, 4 and 5).

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

#### PROVEN FACTS

First. On 10/15/18, this Agency received a claim against the establishment  
ment Café Bar Nina, motivated by the installation of a camera that could be  
misguided, affecting the right of third parties without just cause.

Second. There is no accredited evidence that it has the mandatory informative poster indicating  
that it is a video-monitored area, informing where appropriate of the person in charge of the  
system, an aspect verified by the acting force displaced to the place of the facts.

Third. It is a proven fact that there is no informative form(s) available.  
position of any client of the establishment that may require it.

Fourth. According to the evidence provided, the camera is oriented in such a way that it allows  
It allows capturing image (data) of third parties without just cause.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/8

The outer camera affects a transit area, allowing images to be obtained

pedestrians, lacking an informative poster where the finality is indicated.

ity of the treatment and the person in charge.

Fifth. There is a prior pronouncement of this body \*\*\*REFERENCE.1 in

where the denounced entity was warned, without any response

have given for this purpose.

Sixth. The database of this Agency was consulted (01/20/20) and the notification

electronically, although the term for access to it has expired, the user has not accessed the

content thereof by the accused party, no explanation has been given in this regard.

Seventh. There is no authorization from the Community of owners for the installation

of the outer chamber, in common elements of this, nor has an explanation been accredited

some to the President of that community.

Eighth. It is accredited that the hotel establishment maintains its activity, in

address provided, there being no justified cause for non-receipt of notifications.

tions of this Agency.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), recognizes each

Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the

LOPDGDD, the Director of the Spanish Data Protection Agency is competent

te to start and solve this procedure.

II

In the present case, we proceed to examine the claim dated 10/15/2018 by

means of which the following is transferred as the main fact.

“Installation of cameras in a garage without proper authorization” (folio

No. 1).

The facts described above may affect the

content of art.5.1 c) RGPD. “Personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization").

It should be remembered that individuals can install video surveillance cameras

although they assume the responsibilities that they comply with the provisions

in force on the matter.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

4/8

Only the community of owners, once the consequent

agreement in the Homeowners Meeting, by a simple majority of those present, may

agree on the installation of a video surveillance system with security cameras in

the common areas of a building (garages, parking, storage rooms, portals...), at the same time

that the installation of this security camera system will be subject to the

obligations implied by the L.O.P.D.G.D.D and R.G.P.D. (Duty to inform, principle of

proactive responsibility, Record of Treatment Activities etc)

On some occasions, the protection of private spaces is only possible if

the cameras are located in spaces such as facades. Sometimes it is also necessary

ary to capture the accesses, doors or entrances, so that, although the camera is

inside the building, it is impossible not to record a minimal and important part dispensable from the public road, which is inevitably captured.

In order for this exception on the protection of private spaces to apply, cable, there shall be no alternative installation possibility. In these cases, the responsible for the treatment carried out through cameras will adapt the use of the so that the impact on the rights of third parties (passers-by) is minimal. no possible. In no case will the use of surveillance practices be admitted beyond the environment object of the installation, not being able to affect the surrounding public spaces. contiguous buildings and vehicles other than those accessing the guarded space.

### III

In accordance with the above, the treatment of images through a system subject of video surveillance, to be in accordance with current regulations, you must comply with the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, it can only be installed by a private security company that meets the requirements contemplated two in article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of people who are outside the private space where the video surveillance system is installed, since the treatment of images in public places can only be carried out, unless Government authorization concurs, by the Security Forces and Bodies. Either spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or in the inside, it may be necessary to ensure the security purpose the recording of

a portion of the public road. That is, cameras and camcorders installed with fi-  
security officers will not be able to obtain images of public roads unless it is im-  
dispensable for said purpose, or it is impossible to avoid it due to the location of  
those and, extraordinarily, the minimum space for said financing will also be collected.  
ity. Therefore, the cameras could exceptionally capture the minimum portion-  
mind necessary for the intended security purpose.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/8

- The duty to inform those affected provided for in the articles must be complied with.

12 and 13 of the RGPD, resulting from application -by not contradicting the provisions of the  
aforementioned Regulation-, the manner provided for in article 3 of Instruction 1/2006, of 8  
of November, of the Spanish Agency for Data Protection, on the Treatment  
of Personal Data for Surveillance Purposes through Camera Systems or Vi-  
deochambers.

Specifically, at least one distinction must be placed in video-monitored areas.

informative display located in a sufficiently visible place, both in open spaces

as closed, which will 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. Likewise, the information must be kept available to those affected.

to which the aforementioned RGPD refers.

- 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. It's not permitted, 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 beyond the en- object of the installation and in particular, not being able to affect the public spaces surrounding spaces, adjoining buildings and vehicles other than those accessing the space. guarded man

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

It is also of interest, in case of carrying out data processing of low risk, the free tool Facilita (in the "Guides and tools" section), which through specific questions, it allows to assess the situation of the person in charge aspect of the processing of personal data that it carries out, and where appropriate, generate diverse documents, informative and contractual clauses, as well as an annex with indicative security measures considered minimal.

#### IV

The corrective powers of the Spanish Protection Agency of Data, as a control authority, are established in article 58.2 of the RGPD. In- Among them are the power to sanction with a warning -article 58.2 b)-,



C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

6/8

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

Article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine

administrative.

v

In accordance with the evidence available in this proceeding,

sanctioning procedure, it is considered that the exposed facts do not comply with what is established

do in art. 5.1 c) RGPD for what could lead to the commission of a typified infringement-

given in article 83.5 of the RGPD, which provides the following:

“The infractions of the following dispositions will be sanctioned, in accordance with

paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or,

from a company, of an amount equivalent to a maximum of 4% of the volume

of total annual global business of the previous financial year, opting for the ma-

higher amount:

a)

basic principles for treatment, including conditions for con-

sentiment under articles 5, 6, 7 and 9;

The reported entity has installed a video-surveillance camera in an area of transit, affecting the rights of third parties, despite the various requirements carried out, lacking the establishment of the informative poster and the corresponding tooth forms available to customers.

The installed system processes personal data of third parties, without having a form. any document available to anyone who may require it, not stating the purpose of the transaction. treatment, nor the person in charge to whom you can go.

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

- the nature of the offense by having a video-surveillance device, controlling a small space in a transit area, without having an informative sign mative (art. 83.2a) RGPD).
- intentionality, given that there is a prior procedure associated with the decision announced where it had been warned, being published in the B.O.E (art. 83.2 b) RGPD).

In the present case, it is taken into account that it is a small establishment. neighborhood, as well as the scarce knowledge in the matter that occupies us in matters of data protection, all of them reasons that justify imposing a sanction encrypted in the amount of €2,000, a sanction that is adjusted to the installation by a natural person of this type of device.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

7/8

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD,

typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

The foregoing does not prevent, simultaneously correcting the specific deficiencies by the State Security Forces and Bodies, providing all the documentation necessary mention for this purpose.

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 CAFE BAR NINA (Nina Cb), for an infraction of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, a fine of €2,000 (Two Thousand Euros), being punishable in accordance with article 58.2 RGPD.

SECOND: NOTIFY this resolution to CAFE BAR NINA (Nina Cb), and IN-TRAIN the result of the actions to the denouncing party COM. OF PROP. RESIDENTIAL CAMPUS \*\*\*NUMBERS.1).

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, of the Administrative Procedure Co- of the Public Administrations (hereinafter LPACAP), within the term of payment 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 in the name of the Spanish Agency Data Protection Policy at Banco CAIXABANK, S.A. Otherwise, will yield to its collection in the executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the voluntary payment will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the term of the payment will be until the 5th of the second following month or immediately after.

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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

8/8

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

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 LPA-

CAP, the firm resolution may be provisionally suspended 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 city tada Law 39/2015, of October 1. You must also transfer to the Agency the documentation certifying the effective filing of the contentious-administrative appeal. Yes the Agency was not aware of the filing of the contentious-administrative appeal nistrative within two months from the day following the notification of the pre- This resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](https://sedeagpd.gob.es)