

□ Procedure No.: PS/00293/2020

## 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) dated January 30, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the claimed one). The

The reasons on which the claim is based are the installation of a video camera system.

deo-surveillance oriented towards public space (terrace area) without having the

authorization required in these cases, exceeding the control towards transit areas

public without just cause.

Along with the claim, provide sufficient evidence that proves the presence of the

cameras outside the establishment object of the complaint (Annex Doc. I).

SECOND: On 03/05/20, the claim is TRANSFERRED to the party

reported.

THIRD. On 06/18/20, a reply was received from Doña C.C.C., stating

be the owner of the property, although it is leased to Mr.

B.B.B., which has a Pub Café business (Pub Shiva), it should be clear

that any breach of the regulations in force regarding the protection of

data belongs to the lessee, being the main responsible for the installation of the

cameras.

FOURTH: On December 30, 2020, 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 RGPD, typified in Article 83.5 of the GDPR.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations (02/16/21) in which, in summary, it stated the following:

“That we have come to reject as inadmissible the complaint made by the claimant, since the facts formulated are not true, specifically that the installation of the cameras has been carried out by a professional company such as Todo Seguridad SL

None of the cameras installed by the company Todo Seguridad S.L does not comply with any regulations, being oriented towards private spaces and not neighbors, with a correct operation.

In addition, the facility has a poster informing of the existence of same (...) And the neighbors have never made a call, only to the subscriber, but to the company Todo Seguridad S.L.

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Note that due to the pandemic the establishment is closed from March 13 to February 12, 2021 (...)

Along with the allegations, the following attached documentation is attached:

-Doc. Nº 1 Book Catalog of Installation and Revision of the establishment Pub Shiva Club Music.

-Doc. No. 2 Photographs, where the orientation of the cameras is observed, as well

such as the billboards and telephone numbers of Todo Seguridad, S.L..

SIXTH: Attached as an annex is a list of documents in the

procedure, remembering the full accessibility to the documentation of this

Administrative file.

SEVENTH: On 02/19/21, a “Resolution Proposal” is issued by means of which

the described infraction is confirmed, considering the art. 5.1 c) GDPR,

proposing a penalty of €1,500, lacking the establishment of a cartel

informative duly homologated to the regulations in force.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

#### PROVEN FACTS

First. On 01/30/20 a claim is received through which the

The main fact is the following:

“Installation of a video-surveillance camera system facing the

public space (terrace area) without the authorization required in these cases.

overstepping control into public transit areas without just cause” (fo-

mess no. 1).

Second. It is identified as the main responsible Don B.B.B., who denies the

facts claimed.

Third. The defendant has a video-surveillance system for the security of

the workers (porters) of the Pub Shiva Music Club establishment, whose installation

is run by the company Todo Seguridad S.L.

A copy of the contract with the company-Todo Seguridad S.L—dated

05/07/17 whose Condition No. 5 contains the necessary references to the obligations of the

claimed in terms of data protection.

Fourth. It is proven that the defendant has a cartel, but it is not

the poster approved in terms of data protection, limiting itself to information

sea of the installation company, but not of the "responsible for the treatment".

The poster provided only informs about the private security of the establishment,

but it does not contain the information required in art. 13 GDPR.

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Fifth. Excessive recording of public transit area is verified, specifically:

-Photogram No. 1 (Proof Annex II) allows capturing the width of the sidewalk, affected  
ting to the adjoining properties.

-Photogram No. 3 (Proof Annex II) allows capturing the parallel street, observing  
including the vehicle parked in the nearby area.

## FOUNDATIONS OF LAW

Yo

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 01/30/20 is examined by me-  
from which the existence of cameras installed with orientation towards  
public space (terrace area) without having the authorization required in these cases.  
sos, overstepping control into public transit areas without just cause.

The art. 5.1 c) RGPD provides the following: The personal data will be:

“adequate, relevant and limited to what is necessary in relation to the purposes

for which they are processed” (“data minimization”).

It should be remembered that individuals are responsible for ensuring that the systems installed

fulfilled 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 informative sign.

ive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each personal character.

Establishments must have the corresponding forms available.

position of the clients and inspection authorities that, in their case, may require them, facilitating the exercise of their rights if necessary.

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

With this type of device it is not possible to obtain image(s) of public space either. co, as this is the exclusive competence of the State Security Forces and Bodies ted.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards private space, since it is considered

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that this type of device can affect the privacy of third parties, that they are intimated by it in the belief of being the subject 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.

III

On 02/16/21, a written statement was received from the respondent by means of which manifests “denying the facts imputed to him” arguing that he has an internal cartel. training where it is indicated that it is a video-monitored area.

In support of his claim, he provides a photograph (Proof Document Annex II) that allows us to verify that the installed sign is a sign of the installation company, but that it does not adapt to the regulations on data protection, by not informing sea of the data controller for the appropriate legal purposes.

The citizen must know who is responsible for the cameras and can demand turn so much that the images in which it appears as asking for a copy are erased.

Therefore, this first infraction in the matter that we are dealing with, as we do not have an approved poster adapted to the regulations in force.

As a second issue to examine, the complainant considers that the chambers Exteriors disproportionately obtain images of public transit areas. co, which may affect your right to image (personal data).

The defendant denies the accusations, providing a photograph of what is captured with the cameras object of denunciation.

After examining them, it is considered excessive what is captured with the same, given that although the façade area of the establishment is captured, it also allows control of the traffic zone and adjacent public space without just cause, observing even the cars parked in a nearby area.

Security cameras installed in private spaces will not be able to obtain images of public spaces, the security function of public spaces corresponds exclusively to the State Security Forces and Bodies.

Article 22 section 2 of the LOPDGDD (LO 3/2018, December 5) provides the

Next:

“Images of public roads may only be captured to the extent that it is essential for the purpose mentioned in the previous section.

The installed cameras invade the space of third parties (passers-by) who transit so through the public area, when entering their visual field in a way

excessive, being captured without their informed consent as the cartel is "irregular"

informative installed that does not inform of the person in charge of the treatment, nor of the way of exercise the rights in your case.

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The purpose of this type of video-surveillance systems is the protection of the establishment against hypothetical robberies with force in things, activating the alarm corresponding and obtaining images of the assailants in his case, not to proceed to carry out excessive control of the area adjacent to the establishment, in such a way that images of neighboring neighbors be captured and stored.

The known facts constitute an infraction, attributable to the defendant, for violation of the content of art. 5.1 c) RGPD, previously cited, so it is considers the imputed infraction proven, regardless of the responsibility that in his case the installation company may be required by the claimant himself in his case.

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 of the infraction since a video-surveillance system has been installed,

affecting the right of third parties without just cause (art. 83.2 a) RGPD).

- the intentionality or negligence in the infraction, being oriented towards the

of public transit without just cause, which makes negligence be considered as

serious (art. 83.2 b) RGPD).

For all this, it is agreed to impose a sanction encrypted in the amount of €1,500

(One thousand five hundred euros), for the installation of a series of cameras, which are affecting

to a public transit area, without just cause, lacking a homologous sign.

attached to the appropriate legal effects, a sanction located on the lowest scale for this

type of offenses.

All this without prejudice to accrediting the regularization of the installed system, accre-

stating such end through documentary evidence (eg photograph with date and time), of the

compliance with all the requirements set by the regulations in force, indicated in

the website of this body [www.aepd.es](http://www.aepd.es).

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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 B.B.B., with NIF \*\*\*NIF.1, for an infraction of Article 5.1.c)

of the RGPD, typified in Article 83.5 a) of the RGPD, a fine of €1,500 (one thousand Five hundred euros).

SECOND: NOTIFY this resolution to B.B.B. and REPORT the result of performances to A.A.A..

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 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

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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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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