

□ File No.: PS/00337/2021

## 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 complaining party) dated February 26, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed as stated in his letter against Hypermarket E. Leclerc lu-

where he performs functions as security personnel. The reasons in which

The claim is based on the following: the presence of cameras in the area is verified

where they change clothes and have lunch without having been consulted about the reason(s)

of their presence.

“On 09/04/20, the Security Inspection of the National Police appeared,

verifying the facts indicated above, drawing up a record of what happened” (folio nº 1

written claim).

Together with your claim, you provide documentary evidence- Direct Inspection Act.

Police General Information (Interior Ministry)- dated 09/04/20 which confirms the presence

of a video-surveillance camera that presumably records the entire interior where

we proceed to change clothes (leisure area) and a second device in the passenger compartment

where you carry out your work activity (Doc. No. 1).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), said claim was transferred on 03/16/21 to the party

claimed, so that it proceeded to its analysis and inform this Agency in the pla-

period of one month, of the actions carried out to adapt to the foreseen requirements

cough in the data protection regulations.

On 04/13/21 a response was received from the entity PINTODIS S.L "that said claim that they send us is a flagrant error, as it says in the header zed; The Spanish Data Protection Agency refers to cameras of security in THE ROOM OF REST IN C. \*\*\*COMERCIAL.1, MADRID. Saying shopping center has local commercial numbers, for which each local contara with a rest room, such responsibility not being attributable to SCABER S.C of the management of said rest rooms and their security measures.

A greater abundance SCABER S.C They do not have any commercial premises in said Mall. The only link is with the company PINTODIS SL with CIF B86234566 which SCABER SC provides service.

Pintodis S.L has NEVER placed a video surveillance camera in the rest area; I repeat never. For this, the different tests taken by means of a photograph in DOCUMENT 1. The only control mechanism that exists

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te in that room is a motion sensor that neither records visually nor audibly.

(DOCUMENT 2 is attached.

Said control of both occupational safety and video surveillance is carried out Me- by the company INGECOM SISTEMAS S.L. Which has its manager agreement signed treatment. (DOCUMENT 6 is attached).

THIRD: On 04/15/21 a letter of allegations is received from the entity Coessegur S.A stating the following:

In response to the Request for Information that concerns us, we comment

in the first place that you refer to "REST ROOM IN CENTRO

COMMERCIAL \*\*\*COMMERCIAL.1". Obviously, the Shopping Center is made up

by multiple commercial establishments, among which is the Hypermarket

do E.Lecrerc. Coessegur only provides security surveillance services in

areas belonging to E. Lecrerc, supported by the existing video surveillance system.

try. The security of the common areas of the \*\*\*COMERCIAL.1i Center is compe-

possession of another Security Company.

RESPONSIBLE FOR THE INSTALLATION: (HYPERMARKET E.LECRERC) PIN-

TODIS, S.L. with CIF: B86234556 \*\*\*ADDRESS.1. Phone: \*\*\*PHONE.1.

MANAGEMENT OF THE VIDEO SURVEILLANCE SYSTEM: Coessegur only maintains

a Surveillance Service contract and necessarily uses, as an authorized user,

do, the Video Surveillance System as a complementary tool of the service. The

Maintenance of the CCTV System is contracted with another Security Company.

Surveillance Service Contract and Treatment Manager Contract are attached.

unto

REST ROOM: At the back of the store there is access to the storage area.

warehouses and docks. The administration area is located on the first floor of this area.

tion. The "Personnel Rest Room" is located on this floor. does not have

from no camera. Photographs of the room are attached.

FOURTH: On 06/28/21, the Director of the Spanish Agency for the Protection of

Data agreed to admit the claim filed by the claimant for processing.

FIFTH: On August 16, 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.

SIXTH: On 12/13/21, a "Resolution Proposal" is issued, in which it is proposed impose a sanction encrypted in the amount of €10,000 (Ten Thousand Euros) for the infraction of art. 5.1 c) RGD, by having a video-surveillance camera system that affects an area reserved for the privacy of employees without just cause.

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SEVENTH: Consulted on the basis of this Agency on 01/13/22, it has not been received no allegation in this regard, nor has there been any clarification on them.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

#### PROVEN FACTS

First. The facts bring cause of the claim dated 02/26/21 through the which is transferred by the claimant the presence of video-surveillance cameras in a "reserved" area where some workers change their clothes and where death, without just cause for its presence and without having been informed for it.

Second. It is identified as the main person responsible for Pintodis S.L since it is the responsible for the treatment.

Third. There is evidence of the presence of another chamber object of the complaint, without having- No explanation has been given about the reason(s) for being in the room where of the claimant performed functions as security personnel.

Fourth. The operability of the same is accredited, having contributed the claimant-

you video fragments where you can see him eating or changing his clothes.

## 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

The facts bring cause of the claim dated 02/26/21 by means of which transfers the presence of video-surveillance cameras in the locker room and leisure area “without prior notice or permission” (folio nº 1).

The claimant provides, together with the claim, a copy of the Inspection Act (DGP Ministry of the Interior) dated 09/04/20, which confirms the presence of a “camera on the ceiling that continuously records the entire room as a control center.”

Capturing images through video surveillance cameras in which appear identifiable natural persons constitutes a treatment of data of a character staff.

The claim is directed by the affected party against the entity in which he provides his services.

cios as security personnel-HyperMercado E.Lcrlc--.

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The aforementioned entity is under the responsibility of PINTODIS S.L, which denies

the facts object of imputation, although it recognizes the presence of cameras with a

dual purpose: safety and labor control, assuming the functions of "responsibility"

responsible for the treatment" according to the standard contract that is provided without being signed by the worker claiming maintenance (Doc. No. 3 Written dated 04/13/21).

The art. 5.1 c) RGPD provides the following: Personal data will be: "adequate, per-

relevant and limited to what is necessary in relation to the purposes for which they are processed

("data minimization").

To better understand the legislation on the use of video surveillance cameras or

security, we have to go to article 20.3 of the Workers' Statute. Saying

article states that employers can adopt control measures that consider

necessary to guarantee compliance with regulations within their facilities.

tions, which includes the installation of security cameras.

In this sense, the installation of security cameras must always respond to the

principle of proportionality, that is, that the use of security cameras is

proportional to the purpose pursued, that is to guarantee the safety and compliance with the

rules.

Article 89 section 1 LOPDGDD (LO 3/2018, December 5) provides the following:

following:

"Employers will be able to treat the images obtained through systems

of cameras or video cameras for the exercise of the functions of control of the work

of private or public employees provided, respectively, in article 20.3 of the

Workers' Statute and in public function legislation, provided that these

functions are exercised within its legal framework and with its inherent limits.

Employers must inform in advance, and expressly, clearly and

concisely, to public workers or employees and, where appropriate, to their representatives.

tes, about this measure."

According to the documentary evidence, there is a video-surveillance contract between the entity Pintodis S.L and Coessegur S.A in which the former is responsible of the treatment of the images, being the one that decides on the purpose of the treatment.

unto

In the Act-complaint provided by the claimant, the acting force points to the company Coessegur S.A as the company in charge of the security service, as well as as well as the installation of the cameras, capturing the presence of a video camera deo-surveillance that permanently records a room intended for the leisure of the staff in-loaded with security tasks and a second camera that records the interior where perform their surveillance functions.

The entity Coessegur S.A alleges the presence of various informative posters signs indicating that it is a video-monitored area, both inside the store and in the control room, providing documentary evidence in this regard in document dated 04/15/21.

III

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In accordance with the "evidence" available in this proceeding, sanctioning procedure, it is considered that the claimed party has proceeded to install a video-surveillance camera system that processes data from workers in areas reserved for their privacy without just cause.

The device is located in the staff work area where, according to manifest proceed to use as a locker room and leisure area during interruptions

labor.

The evidence provided allows for a permanent recording of the room to be recorded.

of control where the claimant is observed having lunch at the same time as changing the work uniform.

Workers must be informed of the presence of cameras and must

There must be a formal communication to them where they are warned of the presence of the same, the purpose (s) of the treatment, responsible for the treatment, etc.

It is advisable that the delivered document is signed by the employee of the company.

prisoner or unless there is evidence of communication to the prisoner or his legal representatives in legal form.

It is necessary to remember that the installation of such means in areas

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places of rest or recreation, changing rooms, toilets, dining rooms and the like

ta, a fortiori, harmful in any case to the right to privacy of workers, without further considerations, for obvious reasons.

Of privacy

The known facts constitute an infraction, attributable to the party

claimed for violation of the content of article 5.1 c) RGPD.

IV

In accordance with the evidence available in this proceeding,

penalty, it is considered that the exposed facts do not comply with what is established in the article 5.1.c), for which they suppose the commission of an infraction of art. 83.5, which dis-put the following:

“Infractions of the following provisions will be sanctioned, in accordance

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

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



overall annual total turnover of the previous financial year, opting for the greater 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 to be imposed, the following is taken into account:

a)

the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation to be treated as well as the number of interested parties affected and the level of damage and damages they have suffered; (art. 83.2 a) RGPD).

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b)

the intentionality or negligence in the infringement; (art. 83.2 b) RGPD).

The device(s) is located in a “reserved” zone, which is used as a zone of rest of the security personnel of the installations, being used the same in-even to "change clothes" which involves not only a treatment of sensitive data but an affectation to the intimacy of the workers of the Center, considering considering the conduct described as grossly negligent, by having to provide that the camera (s) installed affected reserved areas excluded from video-surveillance control, not being informed of the purpose(s) of the treatment.

Based on the foregoing, a sanction encrypted in the amount of 10,000

(Ten thousand euros), a sanction located on the lower scale for this type of illegal behavior.

fractors.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria

tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE PINTODIS, S.L., with NIF B86234566 for an infringement of the

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

€10,000 (ten thousand euros).

SECOND: NOTIFY this resolution to the entity PINTODIS, 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, 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

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

Otherwise, it will be collected during 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

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

It will be valid 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 resents may optionally file an appeal for reconsideration before the Director

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of the Spanish Agency for Data Protection within a month from the date of the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and section 5 of the additional provision Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, within a period of two months from the day following the notification of this act, as provided for 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 interested party do states its intention to file a contentious-administrative appeal. If it is-

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to 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 that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal

tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

Sea Spain Marti

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