

□ Procedure No.: PS/00089/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Don A.A.A. (*hereinafter, the claimant) dated September 24,
2019 filed a claim with the Spanish Data Protection Agency. The
claim is directed against JOYPAZAR, S.A. with NIF A28711893 (hereinafter, the
reclaimed).

The reasons on which the claim is based are "installation of a security camera system
video-surveillance that could be poorly oriented towards public and/or private space without
just cause" (folio nº1).

Along with the claim, provide documentary evidence (photographs No. 1-2)
prove the presence of the device(s) object of the complaint.
that

SECOND: In view of the facts denounced in the claim and the documents
data provided by the claimant, the Subdirector General for Data Inspection pro-
vided to carry out preliminary investigation actions for the clarification
of the facts in question, by virtue of the powers of investigation granted to the
control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation
General Data Protection, hereinafter RGPD), and in accordance with the provisions
ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed

that the data controller is the claimed party.

THIRD: On 10/15/19, the claim is TRANSFERRED to the party

denounced, so that he could allege in law what he deemed appropriate, not receiving any answer in this Agency, nor providing the required documentation.

FOURTH. On June 9, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH. Once the aforementioned agreement to start was notified, the respondent presented a written allegations dated 06/29/20 in which he stated the following:

-That it has a total of 10 cameras, providing a copy of the brochure of characteristics of them.

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-That it has an informative poster indicating the person responsible for the treatment (Proof document No. 1).

SIXTH. On 07/09/20, a resolution proposal was issued by means of which accredited infringement of art. 5.1 c) RGPD, proposing a sanction of Warning, considering excessive the capture of public space by the denounced system.

SEVENTH. On 09/25/20, this Agency received a written statement of allegations from the entity JoyPazar S.A succinctly alleging the following:

That JOYPAZAR, S.A. meets all the requirements to prove the legality of the system, providing the following documents

Document 1 – Accreditation of the legality of the security camera system

video surveillance in accordance with article 6.1 of the RGPD in its sections d) and f) and its implementation in accordance with article 20.3 of the Workers' Statute.

Document 2 – Document posted on our website at the link:

***LINK.1 (At the bottom left of that page appears the access to the document with the

Title: Data Protection (and direct access to the document in the following path:

***URL.1) In which the procedure to be followed by clients is clearly specified

to exercise your rights of access, rectification, limitation of treatment,

deletion, portability and opposition to the processing of your personal data.

Document 3 – Copy of the informative poster where it is reported that it is a

video surveillance area and in which it is specifically indicated where you can exercise the customer their data processing rights.

Document 4 – Photo of the image of the exterior camera at present,

being able to observe that it focuses exclusively on the entrance and the part of the sidewalk exclusively necessary.

In view of everything that has been done, by the Spanish Protection Agency

of Data in this procedure the following are considered proven facts,

PROVEN FACTS

First. On 09/24/19, this Agency received a claim from the epigra-

entrusted by means of which it is transferred as main fact:

“Installation of a video-surveillance camera system that could be

poorly oriented towards public and/or private space without just cause” (folio nº1).

Along with the claim, provide documentary evidence (photographs No. 1-2) that

prove the presence of the device(s) object of the complaint.

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Second. The establishment is identified as the main responsible

JOYPAZAR S.A, which does not deny having installed a video-surveillance system, with security purposes of the betting establishment that it runs.

Third. Provides documentary evidence that proves having an information poster inside the establishment, indicating the data controller.

Fourth. There is no record of having form(s) available to customers inside the establishment, informing them of the way to exercise the rights in the framework of articles 15-22 RGPD.

Fifth. The video-surveillance system consists of a total of 10 cameras, providing keeping documents on their technical characteristics.

The nine interior cameras control the interior of the establishment of bets, allowing capturing images of customers in their playful activity in front of of arcade machines.

The only exterior camera captured an image of the entire width of the sidewalk located in front of the recreation facility. (photographic doc. Print external camera).

It has been reoriented (Doc. 4 Current exterior camera photo) from date 09/25/20.

Sixth. The term of conservation of the images is 15 days.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority-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 solve this procedure.

II

In the present case, we proceed to examine the claim of entry date 09/24/19 by means of which it transfers the fact of placing a camera system flush on the facade of the Joypazar establishment, without an information sign on the door of the establishment and with a camera presumably badly oriented towards a space of zeros without apparent 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").

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It should be remembered that individuals are responsible for ensuring that the systems installed felled 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. tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each personal character.

In any case, the cameras should preferably be oriented towards the space particular, avoiding intimidating neighboring neighbors with this type of device, as well how to control their transit areas 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 that this type of device can affect the privacy of third parties, that they are intimidated by it in the belief of being the subject of permanent recording.

The installation of the system must be in accordance with the intended purpose, control of the establishment, serving as a deterrent against theft and/or acts of vandalism, in such a way that the set of clients of the same are aware that it is a video-monitored space.

III

In accordance with the evidence available in this proceeding sanctioning party, it is considered that the defendant had a video-surveillance system that was poorly oriented towards public space.

Specifically, it is proven that the external camera captured the width of the public sidewalk, when it should be oriented towards the facade of the establishment, fulfilling in this way its protective work of the property.

On the occasion of the "indications" of the proposal of this body, the entity denounced has proceeded to reorient the exterior camera in such a way that it controls a minimum portion of the sidewalk and the external facade of the recreational establishment.

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

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

The installation of video surveillance cameras on the street corresponds solely and exclusively to the State Security Forces and Bodies in the performance of functions security.

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It is recommended that the camera be as close as possible to the facade outside the establishment, proceeding to mask the areas where they travel pedestrians outside the establishment.

The known facts constitute an infraction, attributable to the defendant, for Violation of article 5.1 c) RGPD.

The art. 83.5 RGPD provides the following: "Infringements of the provisions following will be sanctioned, in accordance with section 2, with administrative fines EUR 20,000,000 maximum or, in the case of a company, an equivalent amount. equivalent to a maximum of 4% of the total global annual turnover of the fiscal year previous financial statement, 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;

IV

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation with what is stated in Considering 14.

"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 a sanction. tion by means of a fine, a warning may be imposed. must, however, lend special attention to the nature, seriousness and duration of the infringement, its character intentional, to the measures taken to alleviate the damages suffered, to the degree

liability or any relevant prior violation, to the manner in which the authority control authority has become aware of the infraction, compliance with measures measures ordered against the person in charge or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

In the present case, the absence of previous infringements is taken into account.

accredited, as well as the condition of a small recreational establishment, to justify carry a final warning sanction.

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 JOYPAZAR, S.A., with NIF A28711893, for a infringement of Article 5.1.c) of the RGD, typified in Article 83.5 of the RGD, a warning sanction.

SECOND: NOTIFY this resolution to the entity JOYPAZAR, S.A. and

REPORT the result of the proceedings to the complainant Mr. A.A.A.

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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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-300320

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