

936-031219

□ Procedure No.: PS/00004/2020

RESOLUTION R/00264/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00004/2020, instructed by the Agency

Spanish Data Protection Authority to AUTO DESGUACES IGLESIAS, S.L., given the

complaint filed by A.A.A., and based on the following,

BACKGROUND

FIRST: On March 11, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against AUTO DESGUACES

CHURCHES, S.L. (hereinafter, the claimed party), through the Agreement that is transcribed:

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Procedure No.: PS/00004/2020

935-240719

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for the Protection of

Data and based on the following

FACTS

FIRST: Don A.A.A. (hereinafter, the claimant) dated October 21, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against AUTO DESGUACES IGLESIAS, S.L. with NIF

B37026291 (hereinafter, the claimed one). The grounds on which the claim is based are

the following:

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“That there are various cameras outside the establishment, including some rooms focusing on public roads and on customer reception as well, being able to in-comply with data protection regulations (...) without being marked in any way ...”—folio nº 1--.

Together with the claim, it provides documentary evidence that proves the presence of the outer chambers (Annex I).

SECOND: In view of the facts denounced in the claim and the documents data provided by the claimant / of the facts and documents of which he has had co-knowledge of this Agency, the Subdirector General for Data Inspection proceeded to carrying out preliminary investigation actions to clarify the facts in question, by virtue of the powers of investigation granted to the authorities des control in article 57.1 of Regulation (EU) 2016/679 (General Regulation Data Protection, hereinafter RGPD), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed that the data controller is the claimed party.

THIRD: On 11/21/19, the claim is TRANSFERRED to the entity denounced, receiving a reply letter dated 12/19/19.

FOUNDATIONS OF LAW

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

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.

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II

In the present case, the claim dated 10/21/19 is examined by me-
gave from which the following is transferred as the main fact:

“That there are various cameras outside the establishment, including some
rooms focusing on public roads and on customer reception as well, being able to in-
comply with data protection regulations (...) without being marked in any way
...”

On 12/19/19, this Agency received a written claim from the
denounced party providing a copy of the informative poster in a visible area, indicating the
responsible for the treatment.

After analyzing the images provided by the recording system, it is confirmed
that some of them you get images disproportionately of the ca-
adjoining public highway, exceeding the perimeter frame allowed for this type of
devices.

Individuals cannot obtain images of public space, as this is
a competence reserved to the State Security Forces and Bodies.

It must be borne in mind that in the field of capturing images of the
public highway the law establishes a series of limitations. Article 1 of the Organic Law

4/1997, of August 4, which regulates the use of video cameras by

State Security Forces and Bodies in public places establishes:

"This Law regulates the use by the Security Forces and Bodies

of video cameras to record images and sounds in open or closed public places.

two, and its subsequent treatment, in order to help ensure citizen coexistence,

the eradication of violence and the peaceful use of roads and public spaces,

as well as to prevent the commission of crimes, offenses and infractions related to the

public security".

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III

In accordance with the evidence available at this time,

agreement to initiate the sanctioning procedure, and without prejudice to what is

As a result of the investigation, it is considered that the respondent has a camera system

ras that obtains images of public space without just cause.

The known facts could constitute an infraction, attributable to the

claimed, for violation of art. 5.1 c) GDPR.

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;

When motivating the sanction, it is taken into account that it is a small family business, as well as previous collaboration with this Agency in the require-carried out, apart from the fact that it has not been sanctioned previously by this organization. mo.

-Through it, images of attached public space are obtained without caution.

sa justified, being able to exercise control of the people and vehicles that transit by the area (art. 83.2 a) RGPD).

-It should have been foreseen after the complaint filed, that the camera (s) was wrong oriented, so the conduct is considered negligent to a slight degree (art. 83.2 b) GDPR).

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Therefore, it is appropriate to propose a sanction located on the lowest scale for this type of infractions for the reasons stated, calculating the same in the initial amount of €1,500 (One thousand five hundred Euros), minimum penalty for cases such as the one exposed.

All this without prejudice to proceeding to reorient the camera in question that it is oriented preferentially towards his particular property or is relocated than to fulfill its purpose, but respecting the affected rights.

It must also have an informative form(s) adapted to the regulations is in force, available to the client who may require it.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START SANCTIONING PROCEDURE against the entity AUTO

DESGUACES IGLESIAS, S.L., with NIF B37026291, for the alleged infringement of the art.5.1 c) RGPD, infringement typified in article 83.5 a) RGPD.

SECOND: APPOINT B.B.B. and, as secretary, to C.C.C., indi-

stating that any of them may be challenged, where appropriate, in accordance with the provisions ed in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim information filed by the claimant and his documentation, the documents obtained and generated by the Subdirector General for Data Inspection during the investigation phase. investigations, as well as the report of previous inspection actions.

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FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1-
tubre, of the Common Administrative Procedure of the Public Administrations, the
sanction that could correspond would be €1,500 (one thousand five hundred Euros), without prejudice
cio of what results from the instruction.

FIFTH: NOTIFY this agreement to AUTO DESGUACES IGLESIAS, S.L.,
with NIF B37026291, granting a hearing period of ten business days for
formulate the allegations and present the evidence that it deems appropriate. In his is-
letter of allegations must provide your NIF and the procedure number that appears in
the header of this document.

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Co- of the Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event of that the sanction to be imposed was a fine, it may recognize its responsibility within of the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in the present procedure. With the application of this reduction, the sanction would be established at €1,200 (one thousand two hundred Euros), resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of the claim, present procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 1,200 euros and its payment will imply the termination of the process.

The reduction for the voluntary payment of the sanction is cumulative to the one that corresponds to apply for the acknowledgment of responsibility, provided that this acknowledgment acknowledgment of responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of amount referred to in the preceding paragraph may be made at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the sanction would be established at 900 euros.

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In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above €1,200 or €900 must be paid by your deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading processing of this document and the reason for the reduction of the amount to which it is accepted. Likewise, you must send proof of payment to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered. sada.

The procedure will have a maximum duration of nine months from the the date of the start-up agreement or, where applicable, of the draft start-up agreement. Trans- After this period, it will expire and, consequently, the update file will tions; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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: On June 4, 2020, the claimant has proceeded to pay the

SECOND

penalty in the amount of 900 euros making use of the two reductions provided for in

the Start Agreement transcribed above, which implies the recognition of the responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

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FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature,

the competent body to resolve the procedure will apply reductions of, at

least 20% of the amount of the proposed sanction, these being cumulative

each. The aforementioned reductions must be determined in the notification of

initiation of the procedure and its effectiveness will be conditioned to the withdrawal or

Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations.

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00004/2020, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to AUTO DESGUACES IGLESIAS,

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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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative 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.

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Director of the Spanish Data Protection Agency

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