

□ Procedure No.: PS/00069/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On January 25, 2021, it had entry in this Spanish Agency of  
Protection of Data a document presented by GUARDIA CIVIL - POSITION OF  
\*\*\*LOCALIDAD.1 (hereinafter, the claimant), through which he formulates  
claim against A.A.A. with NIE \*\*\*NIE.1 (hereinafter, the claimed one), for the  
installation of a video surveillance system installed on the street \*\*\*ADDRESS.1,  
\*\*\*LOCALIDAD.2, BADAJOZ, with indications of a possible breach of the  
provided in the provisions of the personal data protection regulations.

The reason for the claim is that "(...) it has security cameras but does not have  
poster informing of the same or the rights of supermarket users  
(...)".

Provides Act-Complaint of the Civil Guard.

SECOND: The claim was admitted for processing by means of a resolution of 12  
February 2021.

THIRD: On March 23, 2021, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against the claimant, for the  
alleged infringement of Article 13 of the RGPD, typified in article 83.5 of the  
Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27,  
2016, regarding the protection of natural persons with regard to the treatment  
of personal data and the free circulation of these data and by which the  
Directive 95/46/EC (hereinafter, RGPD).

FOURTH: On March 29, 2021, this Agency entered the allegations presented by the respondent, who, in summary, indicates that he does have Informative posters of the existence of the video surveillance system. Provides several photographs where four posters are observed. Two of them, located next to each of the cameras located at the top of the wall, almost at the ceiling, at two different points in the establishment. The other two posters are placed at the entrance to the premises.

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

In this proceeding, the following are considered proven facts:

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## FACTS

FIRST: On January 25, 2021, the Civil Guard filed a claim in this Agency against the respondent.

Provides Record-Report of the inspection to the premises in which the following is collected: "At the 11:20 the patrol made up of Agents XXX and ZZZ, carry out an inspection in Supermarket \*\*\*SUPERMERCADO.1 in the town of \*\*\*LOCALIDAD.1 (Badajoz) being able to observe that: it has security cameras but it does not have a poster reporting them or the rights of supermarket users. you will informs that such facts may constitute an administrative infraction and therefore, the competent authority will be notified." there is no manifestation any by the claimant.

SECOND: It is identified as the main responsible D. A.A.A. with NIE

\*\*\*NIE.1.

THIRD: The respondent has contributed together with the allegations to the initial agreement, several photographs in which four informative posters of the existence of a video surveillance system. Two of them located at the top of two walls, next to the roof, and another two in the access area to the premises.

#### 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 as established in arts. 47 and 48.1 of the Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), the Director of the Spanish Agency for the Protection of Data is competent to resolve this procedure.

II

On January 25, 2021, this Agency received a claim from the Guard Civil by means of which it is transferred that the claimed "(...) has cameras of security but it does not have a poster informing about them or about the rights of users of the supermarket (...)", providing Act-Complaint of the inspection to the premises.

III

Article 13, sections 1 and 2, of the RGPD, establishes the information that must be provided to the interested party at the time of collecting their data. In the case of treatments of personal data for surveillance purposes through camera systems or video cameras, the duty of information can be fulfilled by placing, in the video-monitored areas, an informative badge located in a sufficiently visible, both in open and closed spaces, and using forms in the that the planned information is detailed, which the person in charge must make available of those interested.

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The content and design of the informative label must comply with the provisions of the Article 22.4 of the LOPDGDD.

IV

The art. 77 section 5 of Law 39/2015 (October 1) provides the following: “The documents formalized by the officials who are recognized as authority and in which, observing the corresponding legal requirements, collect the facts verified by those will prove them unless it is prove the contrary”. The Security Forces and Bodies displaced to the place of the facts confirm the presence of the system, devoid of any informative poster indicating the person responsible.

On March 29, 2021, a written statement was received from the party denounced by providing photographs in which four informative posters of the existence of a video surveillance system. Two of them located at the top with two walls, next to the ceiling, and another two in the access area to the premises.

Examined the file as a whole, although it is true that at the time of the start of this sanctioning procedure there were no signs indicating the system of installed video surveillance or information on how to exercise rights by interested parties, during the period of allegations it has been verified, with the contribution of a photographic report, that the respondent has proceeded to place of these informative posters.

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In accordance with the foregoing, having examined the modifications of the installed system, the same is considered adjusted to law, consisting of informative posters of the existence of the video surveillance system.

Full collaboration with this body is taken into account when carrying out the precise corrections to avoid affecting the rights of third parties.

Therefore, in accordance with the applicable legislation, once the criteria for graduation of the sanctions whose existence has been proven, and taking into account account that the information posters were placed during the processing of this procedure, the sanction is reduced to a warning, since the posters were not available for a while, although no action is required complementary to having been adopted.

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: NOTICE A.A.A., with NIE \*\*\*NIE.1, for a violation of article 13 of the RGPD, typified in Article 83.5 of the RGPD.

SECOND: NOTIFY this resolution to 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.

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  
writing addressed to the Spanish Agency for Data Protection, presenting it through  
Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-  
web/](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.

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Director of the Spanish Data Protection Agency

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