

938-0419

Procedure No.: PS/00353/2018

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On May 29, 2018, you have entered this Agency in writing

Don A.A.A. (hereinafter, the claimant) reporting the installation of a security camera

video surveillance by the owner of the "PUB MONTALITROS" in each of the

facades of the building, specifically in the front facade located in the

*** ADDRESS.1, where the main entrance of the premises is, and on the rear facade

located at ***ADDRESS.2, where there is an exclusive exit for the

local staff.

The claimant asserts that both cameras point directly at the road

public, covering the one located at the main entrance as well as the area of the portal of the

claimant, while the one placed at the rear not only covers the entrance

back of the establishment but also the public space with benches and very

crowded by pedestrians. Adds that the cameras have been installed without request

authorization or inform the Community of Owners, despite the fact that both

entrances of the premises are double and have enough space to be able to place the cameras

video surveillance without obtaining images of the street or the portal.

SECOND: Dated June 28 and August 7, 2018, from the Subdirectorate

General Data Inspection of this Agency, two separate requests were sent

of information to the aforementioned establishment, in which the owner of the

facility to certify that the treatment carried out was in accordance with the

data protection regulations and that, in particular, was duly marked

and the capturing of images of adjoining land and houses or of

any other foreign space.

Said shipments were returned both shipments for “Surplus” with dates 12

July and August 29, 2018 as they have not been withdrawn from the Post Office by

its addressee, to whom notice had been left in the mailbox after being

unsuccessful due to “Absent” the delivery attempts made.

THIRD: On January 8, 2019, the City Council of *** TOWN HALL.1

communicates, at the request of this Agency, that the license of the establishment

called "PUB MONTALITROS, located in the location indicated in the antecedent of

done first above, appears in the name of the entity VENDING AND DISTRIBUTION

2017, S.L., also providing your CIF number.

FOURTH: On January 30, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure of WARNING

to VENDING Y DISTRIBUCIÓN 2017, S.L., (hereinafter, the claimed party), of

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in accordance with the provisions of article 58.2.b) of Regulation (EU) 2016/679 of the

European Parliament and of the Council of April 27, 2016, regarding the protection of

individuals with regard to the processing of personal data and the free

circulation of these data (General Data Protection Regulation, (hereinafter

RGPD), for the alleged infringement of article 5.1.c) of the aforementioned Regulation, typified

in article 83.5.a) of the RGPD,

Likewise, in said initial agreement, in accordance with the provisions of article

58.2.d) of the RGPD, the claimed party was required to, within ten business days, provide the AEPD with graphic documentation, or any means of proof that proved that the cameras had been reoriented so as not to capture public roads, or, in its case that the video-monitored area was strictly limited to the entrances to the premises, and that show the exact place on the façade where both were installed cameras. He was also required to credit the images actually captured from each of the cameras located on the front and rear façade, and must include the date and time with which the deposits provided corresponded, for which photographs of the images collected by said cameras could be provided, that is, photographs or screenshots of the images displayed through the monitor or device from which they are viewed.

FIFTH: Notification of the aforementioned initiation agreement, dated February 18, 2018 on sole administrator of the respondent filed a brief with allegations in which, in synthesis, denied the commission of the imputed infraction affirming that the cameras of video surveillance minimally captured the essential space on public roads necessary for the purpose of surveillance and security of the establishment.

The respondent claimed to attach graphic documentation and DAV files that supported these allegations by showing the location of the cameras and the images of the space actually captured by them, although it only provided a photograph of a camera whose location he did not identify, not attaching either the security document and its subsequent adaptation.

Likewise, he proposed the practice of the documentary referred to the documents cited above as not provided and that the claim filed be transferred and attached documentation, as well as inspections carried out.

SIXTH: On May 27, 2019, the instructor of the procedure agreed to the opening of a period of practice of tests, within the framework of which it was agreed to practice the

following tests:

1

Consider reproduced for evidentiary purposes the claim filed by the claimant and his documentation, the documents obtained and generated by the Inspection Services that are part of file E/03636/2018.

two

Consider reproduced for evidentiary purposes, the allegations to the initial agreement PS/00353/2018 presented by the respondent and the documentation that they accompanies, which is limited to photographic printing 20190207_174110_002.jpg, Doc 1.

3. Request the respondent to reply to the following points and/or remission of the documentation listed below:

3.1 Sending the following documentation that has NOT been sent together with the brief of allegations, and whose exact date had to be accredited in order to be able to verify that they were the photographs and files obtained prior to the

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date of filing of the aforementioned brief: Photographic prints of the documents

1 to 8, jpg files; Documents 9 and 10; DAV files with the images you they were really captured by those cameras; Documents 11 and 12.

3.2 In any case, documentation was requested to prove the current location of the exterior cameras and the actual scope of the space video surveillance by each of them, which should be accredited by means of a photograph or by another means that would allow for the differentiated display of the images captured by exterior cameras, as displayed on the monitor or equivalent system

3.3 Information provided on the existence of a video surveillance area through photographs of the poster or informative posters in which it is possible to appreciate both its location as the data shown on the posters.

3.4 If a third party has been entrusted with the visualization and treatment of the images captured by the cameras, provide a copy of the signed contract.

3.5 Brand and model of the cameras, providing the documents (manual of installation, technical sheet, invoice or purchase ticket,...) that allow verifying their technical characteristics, location and exact date of installation thereof.

3.6 Copy of communications sent to employees or their representatives to inform of the purpose of the installation of the cameras.

a.

Clarification of whether the images are recorded and the period of conservation of the same, together with the detail of the measures adopted to guarantee that only the authorized personnel access the recordings.

4. Request the respondent to send a copy of all documentation accrediting the procedures carried out before the Community of Owners to the purposes of obtaining authorization for the installation of video surveillance cameras located on the facade of the building, particularly the Minutes that collect the authorization.

For the purposes of providing the requested information and documentation,

It granted the claimant a period of ten business days, counted from its notification.

Regarding the request for transfer of the filed claim and the inspections carried out, attached to the letter was an anonymous copy of the following documentation prior to the agreement to initiate the sanctioning procedure:

Copy of the claim; Transfer claim and documentation requirement to the MONTALITERS PUB; Communication to the claimant of the transfer of the claim to the PUB MONTALITROS, (hereinafter, Musical Bar "MONTALITROS"); Reiteration of transfer of the claim and request for information to the aforementioned PUB; Application information to the City Council of *** TOWN HALL.1 and reply to it.

The aforementioned agreement to take evidence was notified to the respondent on the date

June 4, 2019.

SEVENTH: On June 7, 2019, the written entry of the

City Council of *** TOWN HALL.1 informing that, due to a performance

practiced on May 18, 2019 by the Group of Minors of the Police

Local of *** TOWN HALL.1 in the Musical Bar "MONTALITROS", they verified,

among other facts, the existence of two video surveillance cameras installed in the

main and rear facades of the establishment covering the entrance doors and

local emergency, which, depending on the orientation observed, focused a

public road space greater than the minimum necessary to control access

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main and rear of the premises located, respectively, at ***ADDRESS.1 and

***ADDRESS.2 of ***CITY COUNCIL.1.

Likewise, the report indicates that during the police intervention the

intervening agents observed that the premises had a sign indicating the area

video surveillance located in a place visible to the public and that inside the premises there were

Installed four video surveillance cameras.

It is also noted that the sole administrator of the company holding the

establishment told them that the cameras were recording and that the images

they were collected on a hard drive that was located on a society ship.

EIGHTH: On June 27, 2019, entry is registered in this Agency

written response of the respondent to the request for taking evidence

effected. In said document, documentary evidence (CD) is provided containing:

documents numbers 1 to 8, photographs showing the location of the cameras

located on the facades; documents 9 and 10, DAV files that collect the images that are actually captured by said cameras; document 11, consistent in the security document dated February 2, 2018; document 12, corresponding to the file registration request made before the AEPD on 7 February 2018; Document 13, adaptation of the security document to the RGPD of date September 24, 2018; document 14, referring to the appointment of head of security dated March 18, 2018; documents 15 to 26, with the documents signed by those who are indicated are workers of the claimed, in which that the respondent informs them about the purposes of security and labor control for which the images captured by the installed video surveillance system are used in said establishment.

NINTH: On July 1, 2019, after converting the format to in order to be able to view the content of the documents in the Agency's systems 9 and 10 presented in a proprietary format, it is verified that the images provided They were collected at 5:25 p.m. on February 7, 2019 by the cameras located on the main and rear facades of the aforementioned Musical Bar, verifying that: The images corresponding to camera 1, placed on the façade that gives to ***ADDRESS.1 of ***CITY COUNCIL.1, in addition to collecting images of the window and the main door of the premises also capture the width of the entire area of sidewalk in the sidewalk area.

The images corresponding to camera 7, placed on the rear facade that gives to ***ADDRESS.2 of ***CITY COUNCIL.1, they also collect several meters from the sidewalk surrounding the facade that reaches the back door.

TENTH: On July 2, 2019, a resolution proposal is formulated in the sense that by the Director of the Spanish Agency for Data Protection, of In accordance with the provisions of article 58.2.b) of the RGPD, the claimed

a sanction of WARNING for an infringement of the provisions of article 5.1.c)

of the RGPD, typified in article 83.5.b) RGPD.

Likewise, it was proposed, in accordance with the provisions of article 58.2.d) of the

RGPD, that if the correction of the irregular situation in the

time of the resolution, the Director of the Spanish Agency for the Protection of

Data order the claimant to adopt the necessary measures to adapt the

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data processing carried out through the two video surveillance cameras

placed on the exterior facades of the reviewed Musical Bar "MONTALITROS" to the

data minimization principle. For which, the company that owns it must,

within a month from the date following the notification of the resolution of the

process:

☐ Submit graphic documentation or any means of proof that

certifies that the cameras have been reoriented so as not to capture public roads or, where appropriate,

that the video-monitored area is limited to that strictly necessary to control the

local accesses, being able, in addition, to use privacy masks that prevent

identify people who travel on public roads. Also, you must send

graphic documentation that shows the exact place on the façade where

Both cameras are installed

☐ Accredited the images actually captured from each of the

cameras located on the front and rear facade, the date and time must be recorded

with which the deposits provided correspond. For this they can contribute

photographs or captures of the collected images that are displayed through the

monitor or, where appropriate, through multimedia container formats with the extension

indicated in the motion for a resolution.

ELEVEN: Notification of the aforementioned resolution proposal, dated July 16,

2019, the sole administrator of the claimant submitted a brief of allegations requesting

the file of the procedure for non-existence of infraction, arguing for it:

-That the public road space captured by the cameras was essential for the purpose of surveillance and security of the establishment. It is indicated "that accompany" photographic impressions collected on 02/07/2019 that allow to observe the places where the cameras are installed and their orientation towards the area of access to the premises, although as in the previous allegations, it is not attached any documentation in writing. It is added that after that date they reoriented the cameras, so that practically no sidewalk is captured or it is the minimum indispensable.

- That after the action dated 05/18/2019 of the Group of Minors of the Police Local of *** TOWN HALL.1 "the cameras installed in said establishment already they are not recording any image, but only have a deterrent function, but they don't really capture images." It is argued that during this action the Local Police did not view any image captured by the cameras, so any opinion or report on the public road space that is captured or focused by the themselves are conjectures not supported by any evidence.

- The establishment is currently closed to the public without any type of activity.

At the same time, it is proposed to open a period of practice tests for practice: 1) documentary evidence consisting of the contribution of images of what the cameras capture after the reorientation carried out after February 7, 2019, for which it requests an extension of the term; 2) facilitation of the report of the Unit of Minors of the Local Police regarding the action of May 18, 2018.

TWELFTH: On July 19, 2019, the Instructor of the procedure answered the request for an extension of the term requested by the respondent to carry out the

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evidence proposed in the following sense: "by virtue of what is established in article 32.1 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter LPACAP), IT IS AGREED:

Do not extend the term to practice the test consisting of the "sending of the images that could be captured after the reorientation of the cameras".

Said agreement is produced after the period of practice of test of TEN WORKING DAYS agreed on May 27, 2019, in accordance with the provisions of article 77 of the LAPCAP, and whose notification was made to that company on June 4, 2019.

To which is added that said documentation could have been provided together with the brief of allegations mentioned above, as notified in the proposed resolution of PS/00353/2018 by noting that "It is shown that the procedure so that within TEN DAYS you can allege whatever consider in his defense and present the documents and information that he considers relevant, in accordance with article 89.2 in relation to article 73.1 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public administrations."

There is no recourse against this agreement, in accordance with the established in article 32.3 of the LPACAP.

On the other hand, in accordance with the provisions of article 53.1.a) of the LPACAP, attached is a copy of the report of the Police Minors Unit

Local of *** TOWN HALL.1 regarding the action of May 18, 2019

requested in the outlined pleadings brief.”

The aforementioned document, which was accompanied by an Annex with a printout of the documentation requested, the claimed party was notified by electronic means with date July 22, 2019.

THIRTEENTH: In view of everything that has been done, in this proceeding it is the following are considered accredited,

PROVEN FACTS

1) On May 29, 2018, the entry is registered with this Agency claim against the Musical Bar "MONTALITROS for the installation of two cameras of video surveillance on the front and rear facade of the building on whose ground floor finds said premises which, according to the claimant, instead of pointing directly towards the main and rear doors of the establishment, are oriented towards the public road capturing the public space surrounding each of the aforementioned accesses as well as the entrance portal to the building.

The main entrance to the premises is located on the façade of the building that overlooks the ***ADDRESS.1 of ***CITY HALL.1 while the back door is located on the façade facing ***ADDRESS.2 of that town, a place where there are an area with benches and trees very popular with neighbors and pedestrians.

2) The company VENDING Y DISTRIBUCIÓN 2017, S.L., (the defendant), is the owner of the license to open the “MONTALITROS” Musical Bar, located at ***ADDRESS.1 of 7/15

*** TOWN HALL.1, being Don B.B.B. sole administrator of said company trade.

3) The claimed party is responsible for the treatment derived from the capture and recording of images through the video surveillance system installed in the local review, the which is made up of a total of six video surveillance cameras and a recorder that

it stores the images for cyclical periods that do not exceed twenty days.

Of the six cameras, two are installed on the main and rear façade of the establishment and another four are placed inside the Musical Bar

"MONTALITERS"

4) From the graphic documentation in the file it can be deduced that in the two accesses to the aforementioned establishment is placed an area badge video surveillance.

5) On the occasion of the action carried out, on May 18, 2019, by the Group of Minors of the Local Police of *** TOWN HALL.1 in the aforementioned Musical Bar "MONTALITROS" report is received in this Agency, dated May 29, 2019, in which, among other extremes, indicates that:

- The acting agents confirmed the installation of two security cameras video surveillance located on the main and rear facades in which they are located the main and rear entrance doors of the aforementioned premises. They added that at view of the orientation of the focus of the aforementioned devices were not only collected images of the entrances to the premises but also images of the road were captured public they also focused.
- That the sole administrator of the company that owns the establishment told the acting agents that the cameras were recording and that the images were collected on a hard drive that was in a ship of the society.

6) On July 1, 2019, some images provided by the claimed that they show the images captured at 5:25 p.m. on February 7 2019 by the video surveillance cameras located on the main and rear facade of the aforementioned Musical Bar "MONTALITROS".

It is verified that the images corresponding to camera 1, placed in the

main facade, in addition to collecting images of the window and the main door of the premises also capture the width of the entire sidewalk area. In turn, check that the images corresponding to camera 7, placed on the rear facade, they collect several meters of the sidewalk surrounding the facade that reaches the door rear.

FOUNDATIONS OF LAW

By virtue of the powers that articles 55.1, 56.2 and 58.2. b) and d) of the RGPD recognize each control authority, and according to the provisions of articles 47 and 48.1 of the LOPDPGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

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Article 63.2 of the LOPDPGDD establishes that: “The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.”

II

The capturing of images of natural persons identified or identifiable through through video surveillance cameras, or other capture systems, with the purpose of guaranteeing the safety of people, goods and facilities constitutes a Treatment of personal data.

The treatment of images through a video surveillance system to be

In accordance with current data protection regulations, you must respect the principles of limitation of the purpose and minimization of data collected by the sections b) and c) of article 5.1 of the RGPD.

In this case, it is elucidated whether the processing of images for the purpose of video surveillance carried out by the defendant could exceed the private sphere of the establishment of public attendance of its ownership. Note that the video surveillance cameras installed for security purposes in private spaces not can capture images of public spaces, since in accordance with the Law Organic 4/1997, of August 4, which regulates the use of video cameras by the Security Forces and Corps, and its Development Regulations, approved by means of Royal Decree 596/1999, of April 16, the capturing of images of the road for security purposes must be carried out by the Police Forces and Bodies Security.

Just as the person responsible for processing for video surveillance purposes does not can capture private spaces owned by third parties without the consent of their holders or, as the case may be, of the people who are in them, cannot treat images of the public road for security purposes as it is a treatment reserved for the Security Forces and Bodies.

Therefore, the data controller for video surveillance purposes must adopt the necessary measures so that the cameras are oriented towards the spaces private individuals under surveillance.

However, on some occasions the protection of private spaces is only it is possible if the cameras are located in spaces such as facades. Sometimes also it is necessary to capture the accesses, doors or entrances, so that, although the camera is inside the building, it is impossible not to record minimum and essential of the public road, which is inevitably captured. By what is

exception is applicable, there should be no possibility of alternative installation.

Bearing in mind that:

- The person responsible for processing the data carried out through cameras and/or

video cameras will adapt the use of the installation, so that the impact on the

rights of pedestrians is the minimum possible.

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- In no case will the use of surveillance practices be admitted beyond the

environment object of the installation and in particular, not being able to affect the spaces

surrounding public, adjoining buildings and vehicles other than those accessing the

guarded space.

- In any case, any unnecessary data processing should be avoided in order to

the purpose pursued.

However, from the assessment of the set of evidence elements

in the procedure, it follows that the defendant, responsible for the treatment of

images resulting from the video surveillance system installed in the establishment of

ownership, captures images of the public road through the two cameras of

video surveillance placed on the main and rear facades of the premises, which

are also recorded.

This conduct leads to imputing the defendant the violation of the provisions of the

article 5.1.c) of the RGPD, which establishes, with respect to the "Principles related to the

treatment", the following:

"1. The personal data will be:

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

for which they are processed ("data minimization");

For its part, article 22 of the LOPDGDD, under the heading "Treatments with

video surveillance purposes", it establishes in its sections 1, 2 and 5 that:

"1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of people and property, as well as their installations.

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

However, it will be possible to capture the public road in an extension superior when necessary to guarantee the security of goods or strategic installations or infrastructures linked to transport, without

In no case may it involve capturing images of the interior of a home private.

(...)

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded from its scope of application the treatment by a natural person of images that only captures the interior of their own home.

This exclusion does not cover processing carried out by a security entity private that had been contracted for the surveillance of a home and had access to the images”

In this case, from the set of documentation in the procedure, especially the videos contained in the files provided in the testing phase by

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the defendant showing the captured images, at 5:25 p.m. on the 7th of

February 2019, for each of the two video surveillance cameras located in the front (main) and rear facade of the Musical Bar "MONTALITROS", it is evidenced that the treatment carried out by the defendant affects several meters of the road public area adjacent or surrounding said facades.

These images show that the camera located on the main facade does not

I was just focusing and capturing images of the window and the front door of the local, but also collected the width of the entire sidewalk at the height of the

***ADDRESS 1. For its part, the camera placed on the rear facade, which overlooks the ***ADDRESS.2 of ***CITY COUNCIL.1, collected several meters from the sidewalk surrounding the facade that reaches to the door.

Consequently, the documentary evidence provided by the respondent undermines his allegation that "The installed video surveillance cameras capture minimum the essential space of the public thoroughfare necessary for the purpose of surveillance and security of the establishment", and proves the existence of the conduct offending

The respondent has not justified in any way that said treatment, which involves the capture, storage and recording of images, including images of pedestrians passing by

through the video-monitored area, essential for the intended surveillance and security purposes or that is impossible to avoid due to the location of the cameras, which could be reoriented to focus only on the minimum and essential perimeter space of the public road adjacent to the facades and front and rear access doors to the premises, thus avoiding collecting images of public roads with a range greater than necessary to achieve the aforementioned purposes.

Consequently, it is considered to constitute a disproportionate treatment and

unnecessary personal data concerning customers and passers-by who transit or remain through the spaces of the public thoroughfare captured by each of the aforementioned video surveillance cameras, as evidenced by the two files provided by the claim that they show how these exterior cameras focused several meters from the public road.

In parallel, from the statements and documentation provided by the claimed in the evidence phase, it is evident that he has not reoriented the external cameras in order to avoid the disproportionate treatment of images with personal data from the area of public roads captured, which occupies several meters from the aforementioned streets

On the other hand, from the content of the report sent on May 29, 2019 by the Local Police of the City Council of *** TOWN HALL.1 follows that the two aforementioned cameras were not only still installed in the aforementioned premises with dated May 18, 2019, but were still working. Thus, in the said report figure that during the aforementioned police action the sole administrator of the company owner of the establishment "when asked by the Agents involved as to whether the cameras were for viewing or recording, he stated that they were for recording and that the images were collected on a hard drive that was in a ship of the company, without specifying its location.

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In relation to said police report, it is pointed out that article 77.5 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, under the heading "Means and trial period", provides the next: "5. The documents formalized by the officials who are recognized the condition of authority and in which, observing the legal requirements corresponding the facts verified by those are gathered will prove of

unless proven otherwise”.

In any case, the defendant in his brief of allegations to the proposal for resolution has not accredited by any means of proof the manifestations poured into it. In particular, given its direct link to the events analysed, has not proven the assertions that after the 18th of May 2019, the two video surveillance cameras located in the front and rear facades of the establishment, just as it has not been credited in any way that said devices have stopped capturing images or accredited the date on which they began to perform a merely deterrent function.

Consequently, of the set of evidence items available in the procedure, it is considered that the defendant violates the principle of minimization of data collected in article 5.1.c) of the RGPD when capturing through the two cameras located on each of the facades of the establishment images of the roads surrounding the place where the two entrances are located and, consequently, of pedestrians passing through these public areas adjacent to the entrances and to the main and rear facades of the establishment, since said processing of personal data from public roads, in addition to being exclusive jurisdiction of the Security Forces and Corps, is inappropriate and excessive by capturing, disproportionately, images of natural persons who are found in it, when said information, which is kept recorded by periods of 20 days, it is unnecessary to fulfill the purpose of video surveillance claimed with respect to persons, property and facilities within the establishment.

IV

For the purposes of determining the sanction that could entail the mentioned infraction, the following precepts must be taken into account:

Sections b), d) and i) of article 58.2 of the RGD provide the following:

“2 Each supervisory authority shall have all of the following powers

corrections listed below:

(...)

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of

this Regulation;”

(...)

“d) order the person responsible or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a specified manner and within a specified period;”

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“i) impose an administrative fine in accordance with article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

Article 83 of the RGD, under the heading “General conditions for the

imposition of administrative fines”, in sections 2 and 5.a), states that:

“two. Administrative fines will be imposed, depending on the circumstances

of each individual case, in addition to or as a substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). (...)

5. Violations of the following provisions will be sanctioned, in accordance

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

in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for

the largest amount: (...)

a)

basic principles for treatment, including conditions for

consent under articles 5, 6, 7 and 9; “.

For its part, article 72.1.a) of the LOPDGDD establishes that:

“1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679, are considered very serious and infringements will expire after three years.

that suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

1.

The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.”

In accordance with what was reasoned in previous Fundamentals of Law, it has

The violation of the principle of data minimization by the user has been proven.

reclaimed. Said conduct constitutes an infringement of the provisions of article 5.1.c)

of the RGPD in its relationship with the provisions of article 22.1 and 2 of the LOPDGDD,

typified in article 83.5.a) of the RGPD and classified as very serious for the purposes of

prescription in article 72.1.a) of the LOPDGDD, from whose commission results

responsible the claimed in his capacity as responsible for the treatment of

video surveillance derived from capturing images of public roads through the

two cameras installed on the main and rear facades of the building in which

The Musical Bar "MONTALITROS" is located, collecting, therefore, images

with personal data of the pedestrians who pass through the two streets to which

guide the aforementioned video surveillance cameras.

By virtue of the powers that articles 56.2 and 58.2.b) of the RGPD recognize to

each control authority, and according to what is established in article 47 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure with a sanction of warning.

In the present case, the sanction of warning provided for in article 58.2.b) of the RGPD taking into account the following circumstances:

It is a company whose main activity is not linked to the habitual treatment of personal data, absence of profit in the infringing conduct, given that, without prejudice to the violation of the aforementioned principle

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of data minimization, the treatment of video surveillance images carried out responds to security purposes of people, goods and facilities, considering also that the administrative fine that could fall in accordance with the provisions of Article 83.5.a) of the RGPD would constitute a disproportionate burden for said society.

In view of the described infraction, and not having been accredited by the demanded the adoption of measures to cease excessive data processing and disproportionate images of public thoroughfares (streets ***ADDRESS.1 and ***ADDRESS.2 of ***CITY COUNCIL.1) and of the people who pass through the controlled area, which has been carried out through the two chambers of video surveillance located on the front and rear facades of the premises, is considered appropriate to apply the provisions of the aforementioned article 58.2.d) of the RGPD, in order for on the part of the claimed party, responsible for the analyzed treatment, the technical and organizational measures necessary so that the processing operations comply with the provisions of article 5.1.c) of the RGPD in its relationship with the provided in article 22.1 and 2 of the LOPDGDD.

For these purposes, it is recalled that articles 24.1 and 25.1 and 2 of the RGPD

establish the following regarding the obligations to be fulfilled by the person responsible for the treatment:

“Article 24. Responsibility of the data controller

1. Taking into account the nature, scope, context and purposes of the treatment

as well as the risks of varying probability and severity for the rights and

freedoms of natural persons, the data controller will apply measures

appropriate technical and organizational measures in order to guarantee and be able to demonstrate that the

processing is in accordance with this Regulation. These measures will be reviewed and

They will update when necessary.”

“Article 25. Data protection by design and by default

1. Taking into account the state of the art, the cost of the application and the

nature, scope, context and purposes of the treatment, as well as the risks of various

probability and seriousness that the treatment entails for the rights and freedoms of

natural persons, the data controller will apply, both at the time of

determine the means of treatment as at the time of the treatment itself,

appropriate technical and organizational measures, such as pseudonymisation, designed

to effectively apply the principles of data protection, such as the

minimization of data, and integrate the necessary guarantees in the treatment, in order to

comply with the requirements of this Regulation and protect the rights of

interested.

2. The data controller will apply the technical and organizational measures

with a view to guaranteeing that, by default, they are only processed

the personal data that is necessary for each of the specific purposes of the

treatment. This obligation will apply to the amount of personal data collected, to

the extension of its treatment, its conservation period and its accessibility. Such

measures shall in particular ensure that, by default, personal data is not

accessible, without the intervention of the person, to an indeterminate number of people physical.”

The respondent must prove to this Agency the performance of the measures

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that are ordered to adjust the treatment operations to the provisions of the RGPD

within ONE MONTH, computed from the business day following the notification of

this resolution, for which it will provide graphic documentation or any other

means of proof valid in law that allows verifying its implementation in the form

reliable. It is noted that in the case of providing multimedia container formats

its extension must be "mp4" or "avi" in order to be compatible with the

the agency.

It is noted that section 6 of article 83 of the RGPD, establishes that: “6. The

Failure to comply with the resolutions of the supervisory authority pursuant to article 58,

paragraph 2, will be sanctioned in accordance with paragraph 2 of this article with

administrative fines of a maximum of EUR 20,000,000 or, in the case of a

company, of an amount equivalent to a maximum of 4% of the turnover

global annual total of the previous financial year, opting for the highest amount.”

Article 72.1.m) provides that: “1. According to what the article establishes

83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe to

three years the infractions that suppose a substantial violation of the articles

mentioned therein and, in particular, the following: (...)

m) Failure to comply with the resolutions issued by the authority of

competent data protection in exercise of the powers conferred by article

58.2 of Regulation (EU) 2016/679.”

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 VENDING Y DISTRIBUCIÓN 2017, S.L., with NIF B24705121,

in accordance with the provisions of article 58.2.b) of the RGPD, a sanction of

WARNING for an infringement of the provisions of article 5.1.c) of the RGPD,

typified in article 83.5.b) RGPD.

SECOND: ORDER VENDING Y DISTRIBUCIÓN 2017, S.L., with NIF

B24705121, in accordance with the provisions of article 58.2.d) of the RGPD, the

Adoption of the necessary measures to adapt the data processing carried out to

through the two video surveillance cameras placed on the exterior facades of the

reviewed Musical Bar “MONTALITROS” at the principle of data minimization.

- Submit graphic documentation or any means of proof that proves

that the cameras have been reoriented so as not to capture public roads, having to justify the

date on which the capture angle of the same was modified, or, where appropriate, that the

The video-monitored area is limited to what is strictly necessary to control access to the

local.

- Accredited the images actually captured from each of the cameras

located on the front and rear façade, and must include the date and time with which

the supplied shots correspond. For this, photographs or

captures of the collected images that are displayed through the monitor, which

They may also be presented in multimedia container formats with the extension

compatible with AEPD systems.

- Where applicable, reliably justify the date from which the aforementioned

cameras are not operational.

The claimed party must accredit before this Agency the completion of the ordered by means of any valid proof in law within ONE MONTH to count from the business day following the notification of this resolution.

THIRD: NOTIFY this resolution to VENDING AND DISTRIBUTION 2017, S.L.

In accordance with the provisions of article 50 of the LOPDPGDD, 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 LOPDPGDD, 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/>], 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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