

□ File No.: PS/00558/2021

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

BACKGROUND

FIRST: On November 24, 2021, the Director of the Spanish Agency
of Data Protection agreed to initiate a sanctioning procedure against FRUTAS Y
VEGETABLES LOS CAMPEONES, S.L. (hereinafter the claimed party). notified on
initial agreement and after analyzing the arguments presented, dated February 1
of 2022, the proposed resolution was issued, which is transcribed below:

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File number: PS/00558/2021

PROPOSED 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 June 11, 2021
filed a claim with the Spanish Data Protection Agency. The
claim is directed against FRUTAS Y VERDURAS LOS CAMPEONES, S.L with CIF
B87791588 (hereinafter the claimed part). The grounds on which the claim is based
are the following:

“Installation of cameras in Frutería ***FRUTERÍA.1 without an informative sign-
mative about it.”

Attached Bulletin of complaint with photograph that proves the total absence of

informative poster(s) in the aforementioned establishment (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 to the claimed party, to

to proceed with its analysis and inform this Agency within a month of the

actions carried out to adapt to the requirements set forth in the regulations of

Data Protection.

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THIRD: It should be noted that the respondent had already been previously warned by

this Agency through an informative letter of the need to adjust the system to the law.

current legality within the framework of E/00758/2020, answering the Forces and Bodies

of Security (complainant) about the possible consequences in case of non-compliance

unto

FOURTH: The aforementioned claim gave rise to the opening of Procedure no.

307/2021, which ended with the imposition of a financial penalty in the amount of €1,500

to Don B.B.B. (greengrocer ***FRUTERÍA.1), issued on 09/27/21, for the infraction

accredited by art. 13 GDPR.

FIFTH: On 11/08/21 a letter is received qualified as a reversal appeal by

by means of which the legal representative of the accused certifies that his sponsor is not

responsible for the installation of the system, but a mere employee of the establishment.

I lie.

SIXTH: On 11/15/21, an approving resolution of appeal for reversal is issued

agreeing to open a new procedure against the responsible entity Fruits and Vegetables Champions S.L.

ESTIMATE the appeal for reversal filed by the lawyer ICAM C.C.C. (BBB) against the resolution of this Spanish Data Protection Agency issued with dated September 27, 2021, in sanctioning procedure PS/00307/2021, indicating to the sanctioned party that the obligation to pay the fine is void imposed in the appealed decision.

SEVENTH: On November 24, 2021, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter te, LPACAP), for the alleged violation of Article 13 of the RGPD, typified in the Article 83.5 of the RGPD.

EIGHTH: On 12/31/21, this Agency received a letter of allegations to the Start Agreement notified in legal form, arguing the following:

“Lack of Passive Legitimation and Defenselessness. The claim is not filed against to this Mercantile but against a third party, and for this reason the procedure must fail, since Otherwise, it supposes a defenselessness in our client.

Non-existence of Punishable Act. Based on the foregoing, there is no penalty for as the legal procedure has NOT been respected, not having claimed this part- and not having informed at any time of the existence of a claim (...) or advised to correct any of the alleged non-compliances.

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However, it should be reported in this act that the company has NOT breached the data protection regulations at any time.

For this reason, in addition to the aforementioned that they must make fall the sanction, it is accredited that this part complied with the provisions of the Legislation and currently complies with it (...) for which said pecuniary sanction is not applicable. which can have serious consequences for a business that barely pays enough sufficient to pay the wages of the workers (...)."

NINTH: Attached as an annex is a list of documents in the process.

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 06/11/21 through the which the Local Police (Madrid) transfers the following:

"Installation of cameras in Frutería ***FRUTERÍA.1 without an informative sign-mative about it."

Attached Bulletin of complaint with photograph that proves the total absence of informative poster(s) in the aforementioned establishment.

Second. The company Fruits and Vegetables is identified as the main responsible ras Los Campeones, S.L, with CIF B877915**

Third. It is proven that at the moment of moving the acting force does not con- It had no informative poster, although a photograph is attached by the one claimed in its brief of allegations 12/31/21 where the presence of the same is verified, if counting with any date.

Fourth. In the installed sign, the reference to the repealed regulation LO

15/1999, December 13, without any mention of the rights regulated in the current

12-22 RGPD, nor reference to the "responsible for the treatment".

Fifth. There is no evidence that there is a form(s) available to clients.

establishment that in your case may require it.

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

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of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

Before going into the substance of the matter, it is worth responding to the Complaint of the respondent about of a supposed defenselessness when "the facts that were imputed to them were unknown to them". so".

To this end, it goes without saying that it is aware of the facts in the time of notification of the PS Start Agreement, being able to wield in the exercise of their right to defense, the legality of the system in question, without prejudging the action current procedure prior actions.

On the contrary, the company was able to learn from its own employee the existence of various ocular inspections of the Local Police (Madrid) or even communicate that a sanctioning procedure was being processed for the "irregularities"

authorities” on the billboards that fully affected the establishment in question,
including having duly informed and correcting all irregularities
of the video surveillance system.

Furthermore, there is a prior warning from this Agency to the same
establishment within the framework of E/00758/2020, notified in a timely manner, in
which he was informed of the requirements that the system in question had to meet, given
that he was given the opportunity without any sanction to legalize it.

In an “erroneous” manner, helplessness is mentioned in the “proposal” phase when
What is certain is that the respondent is responding to the notification of the Initiation Agreement.
notice dated 11/24/21 signed by the Director of this Agency, transferring the
facts of the claim verified, let us not forget, by the Forces and Corps of
State security in the establishment itself.

Based on the foregoing, it is appropriate to reject the initial application for nullity, since
defenselessness in the knowledge of the facts, since they have been
concretized and the company has had the opportunity to wield against the same
with the means of proof that it has considered precise.

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III

The facts bring cause of the claim sent by the local Police (Madrid) in fe-
cha 06/11/21 through which the "installation of cameras in Frutería
***FRUITERÍA.1 without having an informative poster in this regard”.

Attached Bulletin of complaint with photograph that proves the total absence of

informative poster(s) in the aforementioned establishment.

Article 77 section 5 of Law 39/2015 (October 1) provides the following:

"5. The documents formalized by the officials who are recognized as authority and in which, observing the corresponding legal requirements the facts verified by those are collected will prove them unless they are prove the contrary".

The above facts suppose an infringement of the content of art. 13 RGPD, to care have an informative badge indicating that it is a video-monitored area, not informing command of the data controller, the purpose of the use given to the images captured tada, etc.

Reporting on video surveillance according to RGPD is an obligation contained in this framework. legislative co.

An informative device must be available in a visible area (eg access door)

indicating that it is a video-monitored area, it must indicate:

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the existence of the treatment.

the identity of the person responsible.

possibility of exercising the rights provided for in articles 15 to 22

of Regulation (EU) 2016/679.

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The image of a person to the extent that it identifies or can identify the person constitutes personal data, which may be processed to di-
various purposes.

Article 22 of Organic Law 3/2018 (December 5)-LOPDGDD- provides:

"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 to preserve the safety of people and property, as well as its installations.
nes.

The AEPD, in a related report, stipulates that it is not necessary for cartels to be stand right below the cameras. It is enough to do it in a visible place and that it includes open and closed spaces where the video camera circuit is operational.

This badge will be displayed in a visible place, and at least, at the entrances to the areas guarded whether indoors or outdoors. In the event that the video-monitored space has has several accesses, said video-surveillance area badge must be available in each one of them.

III

In accordance with the evidence available in this proceeding sanctioning party it is considered that the claimed party has a video system Surveillance that fails to comply with the provisions of art. 13 GDPR, as there is no signage information approved for this purpose.

It should be remembered that the regulations currently in force on the matter are constituted by the RGPD (in application since May 2018), supplying the repealed LO 15/1999, December 13, establishing additional requirements regarding of data protection.

The establishment has been widely warned, including by the Local Police moved to the scene of the events, and must also have a form(s) to

disposition of the clients and of the acting forces in their case.

The Police Record provided creates objective proof in law that at the time if it was extended, the establishment did not have any sign, with regardless of their placement on the occasion of the notification of this Agreement of Start.

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The known facts are therefore constitutive of an infraction, attributable to the party claimed for violation of the aforementioned art. 13 GDPR.

IV

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

b) the rights of the interested parties according to articles 12 to 22;

When motivating the sanction, the following is taken into account:

-the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the treatment operation in question as well as the number of interested parties affected and the level of damages they have suffered (art. 83.2 a) GDPR).

The camera is installed inside a customer access establishment (as) in such a way that it allows exercising control over them that are monitored

without having received any explanation about the purpose(s) of the treatment of their data.

personal cough.

- the intention or negligence in the infringement (art. 83.2 b) RGPD), as there was no

taken any action to report the presence of the cameras inside

of the establishment despite the various recommendations received.

- the way in which the supervisory authority became aware of the infringement, in particular

determine whether the person in charge or the person in charge notified the infringement and, if so, to what extent

(art. 83.2 h), when the facts were notified by the Local Police displaced again

to the scene of the events.

For all these reasons, it is considered correct to impose a sanction encrypted in the amount of

€1,500 (one thousand euros), a sanction located on the lowest scale for this type of infraction.

administrative sanctions, taking into account the various warnings in this regard about the

“irregularity” of the conduct described.

The defendant must therefore prove the effective change of the billboard for a sheet

compliant with the current regulations (RGPD), reflecting the way to exercise the rights

by citizens, if applicable, prove that they have a form(s) available to citizens.

clients and specify the purpose of the recordings in an informative document (vgr.

contract that formalizes, etc), and they must be duly arranged in

a folder in the establishment in case of any new inspection by the Police

Local (Madrid).

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Among the corrective powers contemplated in article 58 of the RGPD, in its section 2

d) it is established that each control authority may “order the person in charge or of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

In view of the foregoing, the following is issued

MOTION FOR A RESOLUTION

That the Director of the Spanish Data Protection Agency sanction FRUTAS Y VERDURAS LOS CAMPEONES, S.L, with CIF B87791588, for an infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD, with a fine €1,500.

Likewise, in accordance with the provisions of article 85.2 of the LPACAP, informs that you may, at any time prior to the resolution of this proceeding, carry out the voluntary payment of the proposed sanction, which will entail a reduction of 20% of the amount of the same. With the application of this reduction, the sanction would be established at €1,200 euros and its payment will imply the termination of the procedure. The effectiveness of this reduction will be conditional on the withdrawal waiver of any administrative action or recourse against the sanction.

In the event that you choose to proceed with the voluntary payment of the amount specified above, subsequently, in accordance with the provisions of article 85.2 cited, it must be carried out by depositing it in restricted account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for Data Protection in the banking entity CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the cause, for voluntary payment

voluntary, reduction of the amount of the penalty. You must also send proof admission to the Subdirectorate General for Inspection to proceed to close the tooth.

By virtue of this, you are notified of the foregoing, and the procedure is made clear to you. so that within TEN DAYS you can allege whatever you consider in your defense and present the documents and information that it considers pertinent, in accordance with Article 89.2 of the LPACAP.

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SECOND: On February 7, 2022, the claimed party has proceeded to pay of the sanction in the amount of 1,200 euros making use of the reduction foreseen in the motion for a resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the resolution proposal.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines 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

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. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but 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 with each other.

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The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation 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/00558/2021, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to FRUITS AND VEGETABLES CHAMPIONS, S.L.

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.

Sea Spain Marti

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