

□ File No.: PS/00463/2021

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 complaining party) dated May 31,
2021 filed a claim with the Spanish Data Protection Agency. The
claim is directed against RESTATURANTE FUENTEBRO, S.C. with NIF
J39619200 (hereinafter the claimed part). The grounds on which the claim is based
are the following:

“presence of cameras with presumed orientation towards the nearby road area
without having the proper informative signage” (folio nº 1).

Together with the claim, it provides documentary evidence (Annex I) that proves the
presence of the camera as support for what was stated.

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 in fe-
cha 06/04/21 and 08/12/21, to proceed to its analysis and inform this Agency
within a month, of the actions carried out to adapt to the requirements
provided for in the data protection regulations.

No response to this letter has been received, nor any clarification on the device(s)
in question has been formulated.

THIRD: On September 15, 2021, the Director of the Spanish Agency
of Data Protection agreed to admit for processing the claim presented by the party
claimant.

FOURTH: On December 9, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: Once the term granted for the formulation of allegations to the agreement has elapsed, beginning of the procedure, it has been verified that no allegation has been received na by the claimed party.

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. The facts bring cause of the claim dated 05/31/21 through the which translates as the main fact the following:

“presence of cameras with presumed orientation towards the nearby road area without having the proper informative signage” (folio nº 1).

Second. The entity Restaurant is accredited as the main responsible

Fuentebro S.C, with NIF J39619200

Third. The presence of video-surveillance cameras is accredited, being

Sufficient evidence provided by the claimant to prove the existence of these.

Fourth. The poor orientation of the camera(s) affecting an area

of transit, carrying out an unnecessary "data treatment" of the neighbors (as) of the

locality, who are intimidated by 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 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, in the Initiation Agreement dated 12/09/21, it was informed, that in case of not making allegations in a timely manner, the Initial Agreement decision would be considered a “resolution proposal” in the terms of article 64.2 f) of the Law 39/2015 (October 1).

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which the party claimed was informed in the agreement to open the proceeding- established that if allegations are not made within the stipulated period on the content of the agreement, initiation document, when it contains a precise statement about the response imputed responsibility, may be considered a resolution proposal. In the present

In this case, the agreement to initiate the sanctioning file determined the facts in which that the imputation was specified, the infraction of the RGPD attributed to the claimed one and the sanction that could be imposed. Therefore, taking into consideration that the claimant mada has not formulated allegations to the agreement of beginning of the file and in attention to established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered in the present case proposed resolution.

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In the present case, the claim dated 05/31/21 is examined by me-
dio from which the "presence of camera (s) oriented
to a traffic road without proper signage" considering the claim
that may affect your right without just cause, which is why you transfer
the facts to this Agency.

The above facts suppose a presumed infraction of the content of art. 13

RGPD, as it lacks an informative label indicating that it is a video-vi-
gilada, not informing the person responsible for the treatment, the purpose of the use given to the
captured images, 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.

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 extensive evidence available in this pro-sanctioning procedure, it is considered that the claimed party has a system video-surveillance without proper signage in the visible area indicating that it is being video-monitoring and taking "images" of the area in question.

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The known facts constitute an infraction, attributable to the party claimed, for violation of art. 13 GDPR, mentioned above.

IV

The art. 83.5 RGD 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 in a hotel establishment affecting a transit area

close, in such a way that it allows exercising control over the aforementioned "trafficked" space.

using data" from third parties, which are monitored without having received any explanation

guna about the purpose (s) of the treatment of your personal data.

This same conduct affects the clients (users) of the establishment who

they do not know the reason(s) for the presence of the camera(s) installed, as well as the finality

ity intended with it.

- 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 camera(s) in establishments

whose orientation is considered disproportionate in a negligent manner.

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

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

administrative infractions, taking into account the various warnings in this regard

on the "irregularity" of the behavior described, as well as taking into account the nature

law of the infringing entity and its activity.

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.

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Therefore, in accordance with the applicable legislation and after assessing the graduation criteria of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the entity RESTATURANTE FUENTEBRO, S.C., with NIF J39619200, for an infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD, a fine of €1,500 (one thousand five hundred euros).

SECOND: ORDER the claimed entity so that within ONE MONTH to counting from the day following the notification of this act, proceed:

-Install informative poster(s) adapted to the regulations in force, specifying the responsible for the treatment and the way to exercise the corresponding rights, providing documentary evidence to that effect (eg date and time).

-Proceed to make informative form(s) available to customers

(as) of the establishment that runs, so that they can exercise the rights recognized two in articles 12-22 GDPR.

THIRD: NOTIFY this resolution to the entity RESTAURANTE FUEN-

TEBRO, S.C..

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co-

of the Public Administrations (hereinafter LPACAP), within the term of payment

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened in the name of the Spanish Agency

Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of

Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

will be until the 20th day of the following month or immediately after, and if

is between the 16th and last day of each month, both inclusive, the term of the payment

It will be valid until the 5th of the second following month or immediately after.

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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

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in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for 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 interested party

do states its intention to file a contentious-administrative appeal. If it is-

In this case, the interested party must formally communicate this fact in writing

addressed to the Spanish Agency for Data Protection, presenting it through the Re-

Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

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

that proves the effective filing of the contentious-administrative appeal. If the

Agency was not aware of the filing of the contentious-administrative appeal

tive within two months from the day following the notification of this

resolution, would end the precautionary suspension.

Sea Spain Marti

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