

□ File No.: PS/00580/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (*hereinafter, the complaining party) dated January 27, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed at this procedural moment against B.B.B. with NIF ***NIF.1

(hereinafter, the claimed party). The grounds on which the claim is based are
following:

“That on 06/14/20 the claimant was at Bar ***BAR.1 of the

Almeria town of ***LOCALIDAD.1 when at a given moment the same
suffered an accidental fall on it.

“That on later dates it proceeded to circulate through WhatsApp between a number
indeterminate neighbors of the town a video from the cameras of
security of the establishment Bar ***BAR.1 where you can see the
pictures of Mr. A.A.A. (...)”

“That the dissemination of such images caused damage and harm both to the honor
and image of the claimant, as well as that of his family, as it is a small
place where he is well known”

“Such a video has also been disseminated through its publication in the
digital newspaper ***PERIÓDICO.1 dated November 17, 2020” (folio No. 1).

Along with the claim, provide documentary evidence (photographs) that prove the
presence of the cameras in the hotel establishment (Annex I).

Item, provides documentary evidence (Doc. No. 3) Notarial Certificate by which

protocolized Internet pages that allow access to the reproduction of the video.

SECOND: On 03/08/21, the TRANSFER is made to the claimed party to that it allege in law what it deems appropriate, without any answer having been made to date.

THIRD: On June 14, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the defendant, with glo to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-
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Common Administrative Procedure of Public Administrations (hereinafter, LPA-CAP), for the alleged infringement of Article 5.1.b) of the RGPD, typified in Article 83.5 of the GDPR.

FOURTH: The database of this AEPD consulted on 07/20/21 does not contain any allegation in this regard by the accused party.

FIFTH: On 07/27/21, a Resolution Proposal is issued agreeing to the imposition sanction encrypted in the amount of €3,000 (Three Thousand Euros), for the infraction accredited by art. 5.1 b) RGPD, considering that they were extracted without just cause images of the system for further dissemination for reasons not justified in legal form.
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SIXTH: On 09/07/21, a Resolution of the Director of the AEPD is issued denying Mr. C.C.C. a penalty amounting to €3,000, for the infraction accredited by art. 5.1 b) RGPD, being the same notified in a timely manner.

SEVENTH: On 10/19/21, it is filed in a timely and written manner qualified as

Appeal for Repossession arguing not to be the main responsible for the installation of the cameras.

EIGHTH: On 10/21/21, the test phase is opened within the framework of the

Resource nº ***RESOURCE.1 to prove the authorship of the installation, requiring co-

pia of the contract to the installation company SECUREXT S.L; providing all the documentation

Mention required in writings dated 11/11/21.

NINTH: On 12/03/21, an Upholding Resolution of the appeal for repossession was issued.

raised on 10/19/21 considering that the investigated is not the main

responsible for the installation of the video-surveillance camera system.

ESTIMATE the motion for reconsideration filed by C.C.C. against

resolution of this Spanish Data Protection Agency issued on the 7th of

September 2021, in sanctioning procedure PS/00236/2021.

TENTH. On December 16, 2021, the Director of the Spanish Agency for

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 infringement of Article 5.1.b) of the RGPD, typified in the

Article 83.5 of the RGPD.

ELEVEN: On 01/17/21 a written statement of allegations is received from the respondent

"denying the authorship of the facts" pointing out that any client (s) who was

that day at the scene of the events in said hostel could have been the author

material of the diffusion of said images for having "captured them with any terminology".

mobile end".

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TWELFTH. On 03/16/22, a "Resolution Proposal" was issued, being the same notified in a timely manner to the claimed party as evidenced in the system of this Agency, without any reply having been produced to that effect.

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 01/27/21 through the which transfers "the use of images extracted from the video-surveillance system installed in the hotel establishment bar ***BAR.1 for dissemination through the WhatsApp application, as well as in other media" (folio nº 1).

Second. It is identified as the main person in charge Mr. B.B.B., responsible for the video-surveillance system installed in Bar Felipe I.

Third. There is a Notarial Act provided by which the pages of Internet that allow access to the reproduction of the video obtained from the cameras of the Bar Felipe I establishment, where the image of the claimant is displayed (Document evidence No. 1 Documentary Annex).

Fourth. It is accredited that the hotel establishment Bar ***BAR.1 has a system of video-surveillance cameras that allows obtaining images of the interior of the same, counting on the obligatory poster (s) informing that it is a question of a zone video-surveillance.

Fifth. It is accredited that a treatment of the affected data has been carried out. do using the images obtained from the installed camera system broadcasting images of the claimant that could affect their public reputation.

Sixth. The installation company Securext confirms the operability of the cameras, as well as the main person responsible for processing the images in the person of the claimant. mado.

Provides a copy of the contract where the "client" counts on 04/16/28 (Doc. 1 Es-written 11/02/21).

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.

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In the present case, the claim dated 01/27/21 is examined by me-gave from which is transferred as the main fact:

“dissemination of images obtained from the video-surveillance camera system without justified cause affecting the honor and personal privacy” (folio nº 1).

The facts are specified in the use of images extracted from the system of video-surveillance of the establishment-Bar Felipe I-, without legitimate cause for it, being publicly disseminated both on social networks and in the media of a public nature.

Article 5.1 b) RGPD provides the following:

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not considered will be incompatible with the original purposes ("purpose limitation")

The image of a person is a "personal data" whenever it can be identify, which can be treated in different ways, for different purposes.

The purpose of a video-surveillance system is the security of the property private property and residents against external aggression (eg robbery with force in the stuff).

The art. 22.1 LOPDGDD (LO 3/2018, December 5) provides:

“Physical 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”.

Likewise, the images (personal data) obtained with them must be kept only to be made available to the competent authority "to accredit order the commission of acts that threaten the integrity of persons, goods or facilities relations" (art. 22.4 LOPDGDD).

The transfer of the images obtained from a video-surveillance system are assessed in the regulations, also specifying the reasons for doing so, not being able to disseminated for a purpose incompatible with obtaining them: the security rity.

The diffusion of the same through different means does not find accommodation in any legitimate cause for it, carrying out a "processing of the data" of the affected- outside the cases permitted by law, being incompatible with the purpose of se-

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security to which the installation of the same obeys, being treated without due reserve required in these cases.

The conduct described is at least considered negligent, of the broad in-statements exposed and evidence provided, it is inferred that he has voluntarily obtained the images from the camera system of the hotel establishment, for later dissemination. public exposure with the aim of taunting the owner of the data, not being the public exposure Publicizes the appropriate means to report any fact that could be in your case reportable

III

In accordance with the evidence available in this proceeding punisher, it is considered that the defendant has proceeded to publicly disseminate the images obtained from the video-surveillance system without just cause.

The images released allow us to verify that it is not a mobile phone. vile particular from which the images that occurred in the place of the facts, the explanations of the respondent regarding the legality of the system being insufficient. video-surveillance issue installed in the hotel establishment that runs.

The known facts constitute an infraction, attributable to the defendant, for violation of the content of art. 5.1 b) GDPR.

The installation company provides a copy of the contract stating as "client" and responsible for the custody of the B.B.B. images, with the same institutions felled in establishment XXXXXXXX.

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:

a)

the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

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

- the nature, seriousness and duration of the offence, taking into account the nature nature, scope or purpose of the treatment operation in question, as well as the number of interested parties affected and the level of damages suffered
fried; (art. 83.2 a) RGPD), when obtaining images (data) from the video-surveillance system breaking the essential security purpose of this type of system.

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- the intent or negligence in the infringement; (art. 83.2 b) RGPD), given its public dissemination through a private WhatsApp Group (page number 1 claim), as well as in social networks, this protocolized aspect (folio No. 3 Notarial Act) me- through the provision of respective links, without just cause for it.
- the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under

of articles 25 and 32 (art. 83.2 d) RGPD), having obtained the images directly
mind of the system, a priori failing to comply with any technical measure in this regard.

For all these reasons, a penalty of €5,000 (Five
Thousand Euros) for the infringement of art. 5.1 b) RGPD, sanction located on the lower scale
for these types of offences.

v

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.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria
tion of the sanctions whose existence has been proven,
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., with NIF ***NIF.1, for an infraction of Article 5.1.b)
of the RGPD, typified in Article 83.5 of the RGPD, a penalty of €5,000 (Five Thousand
euros).

SECOND: NOTIFY this resolution to Don B.B.B..

THIRD: 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 Data Protection Law at the banking entity CAIXABANK, S.A. In case with- 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 www.aepd.es

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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,

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

Director of the Spanish Data Protection Agency

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