

□ Procedure No.: PS/00419/2019

938-090320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On June 19, 2019, it had entry in this Spanish Agency of
Data Protection a document presented by Mrs. A.A.A. (hereinafter the
claimant), through which he makes a claim against Don B.B.B. with NIF ***NIF.1
(hereinafter, the claimed), for the installation of a video surveillance system
installed in the brewery where he worked, because he points out that he has not informed
workers of the existence of the cameras and their use. Provide images
of the camera in the premises (it does not seem that there are posters) and a screenshot of whatsapp in
which, according to her, the owner speaks with the person in charge of monitoring
through the cameras, there being indications of a possible breach of the provisions
in data protection regulations.

Along with the claim, accompany photographs with the location of the cameras
inside the premises; as well as a whatsapp conversation about what is happening
with a worker.

SECOND: Prior to the acceptance of this claim for processing, it is
transferred the claimed, in accordance with the provisions of article 65.4 of the Law
Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of
digital rights (hereinafter, LOPDGDD). The request was not answered
of information.

THIRD: The claim was admitted for processing by means of a resolution dated March 19,

September 2019.

FOURTH: On January 7, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD.

FIFTH: On March 12, 2020, allegations were received regarding the initial agreement cio, in which, in summary, the following is indicated:

The claimant was fired days before filing the claim, trying to be readmitted by different means, without having prospered given the legality of the dismissal.

The cameras were installed by Securitas and there are posters of the company itself company and an informative poster of its installation and the purposes of the video cameras. flush

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All employees were informed of its installation and the reasons for the same. The bar has hired the Adaptalia Group to adapt all the treatments to data protection obligations.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

FACTS

FIRST: The claimant filed a claim against the ***ESTABLISHMENT.1 for the installation of a video surveillance system without informing the workers of the existence of the cameras and their use. Provides images of

camera in the premises (it does not seem that there are posters) and a screenshot of whatsapp in the that, according to her, the owner speaks with the person in charge of monitoring through the cameras.

Along with the claim, accompany photographs with the location of the cameras inside the premises.

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SECOND: The person in charge of ***ESTABLISHMENT.1 presented photographs in the that next to each camera there is a Securitas poster and an information sheet about data processing. He adds that the recording and the purposes were reported. give to all the workers.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authori- control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Directorate tora of the Spanish Agency for Data Protection is competent to resolve this process.

II

The physical image of a person, in accordance with article 4.1 of the RGPD, is a personnel and their protection, therefore, is the subject of said Regulation. In article 4.2 of the RGPD defines the concept of "treatment" of personal data.

It is, therefore, pertinent to analyze whether the processing of personal data (image natural persons) carried out through the video surveillance system denouncing ciated is in accordance with the provisions of the RGPD.

III

Article 6.1 of the RGPD establishes the assumptions that allow it to be considered lawful the processing of personal data.

For its part, article 5.1.c) of the RGD, regarding the principles of processing to, provides that the personal data will be "adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed ("minimization of data")." This article enshrines the principle of data minimization in the treatment of personal data. It assumes that said treatment is adjusted and proportional to the purpose to which it is directed, and the processing of excessive data must be restricted. you or proceed to delete them.

The relevance in the treatment of the data must occur both in the the collection of the data as well as in the subsequent treatment that is carried out on the same. mos.

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

In accordance with the provisions of article 22 of the LOPDGD, specifically referred to specifically to "Processing for video surveillance purposes", establishes the following:

<<1. Natural or legal persons, public or private, may carry out

the treatment of images through camera systems or video cameras with the purpose of preserving the safety of people and property, as well as its installations.

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

However, it will be possible to capture the public road in an area greater than superior when necessary to guarantee the security of goods or facilities strategic or infrastructure linked to transport, without in any case being able to involve capturing images of the interior of a private home.

3. The data will be deleted within a maximum period of one month from its collection, except when they had to be kept to prove the commission of acts that threaten the integrity of people, goods or facilities. In such a case, the Images must be made available to the competent authority within a period maximum of seventy-two hours from the knowledge of the existence of the recording.

The blocking obligation provided for in article 32 of this organic law.

4. The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights provided for in the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

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informative site a connection code or internet address to this information.

In any case, the data controller must keep available

of those affected the information referred to in the aforementioned regulation.

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 they only capture 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.

6. The processing of personal data from images and sounds

two obtained through the use of cameras and video cameras by the Forces and

Security Bodies and by the competent bodies for surveillance and control in

penitentiary centers and for the control, regulation, vigilance and discipline of traffic

co, will be governed by the transposition legislation of Directive (EU) 2016/680, when

the processing is for the prevention, investigation, detection or prosecution of

criminal offenses or execution of criminal sanctions, including protection and

prevention against threats to public safety. Outside of these assumptions

cough, said treatment will be governed by its specific legislation and additionally by the

Regulation (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to the provisions of

Law 5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through information systems

cameras or video cameras is subject to the provisions of article 89 of this organic law.

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And article 89 of the LOPDGDD indicates, regarding the Right to privacy versus

te to the use of video surveillance and sound recording devices in the place of work, the following:

<<1. Employers may treat the images obtained through systems more than cameras or video cameras for the exercise of control functions of the workers or public employees provided, respectively, in article 20.3 of the Workers' Statute and in the public function legislation, provided that These functions are exercised within their legal framework and with the limits inherent to the same. Employers must inform in advance, and expressly concisely, clearly and concisely, to public workers or employees and, where appropriate, to their representatives, about this measure.

In the event that the flagrant commission of an illegal act has been detected by public workers or employees, it shall be understood that the duty to report has been fulfilled. form when there is at least the device referred to in article 22.4 of this organic law.

2. In no case will the installation of sound recording systems be allowed. nests or video surveillance in places intended for rest or recreation of workers or public employees, such as changing rooms, toilets, dining rooms and analogues.

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3. The use of systems similar to those referred to in the preceding sections res for the recording of sounds in the workplace will be admitted only when risks to the safety of facilities, goods and people are relevant.

nas derived from the activity that takes place in the workplace and always respecting the principle of proportionality, the principle of minimum intervention and the guarantees seen in the previous sections. Suppression of sounds preserved by these recording systems will be carried out in accordance with the provisions of section 3 of article 22 of this law.

On some occasions, the protection of private spaces is only possible if the cameras are located in spaces such as facades. Sometimes it is also necessary to capture the accesses, doors or entrances, so that, although the camera is inside the building, it is impossible not to record a minimal and important part dispensable from the public road, which is inevitably captured.

In order for this exception on the protection of private spaces to apply, cable, there shall be no alternative installation possibility. In these cases, the responsible for the treatment carried out through cameras will adapt the use of the so that the impact on the rights of third parties (passers-by) is minimal. no possible. In no case will the use of surveillance practices be admitted beyond the environment object of the installation, not being able to affect the surrounding public spaces. contiguous buildings and vehicles other than those accessing the guarded space.

IV

The claim is based on the presumed illegality of the installation by the called from a video surveillance system, made up of 4 cameras located in the ***ESTABLISHMENT.1, located at ***ADDRESS.1; one of the cameras captures images in the kitchen and record audio; the workers have not been informed of this or the purpose of the recordings.

In addition, the claimant warns that the property reviewed does not have a sign in which the presence of the cameras and the identity of the responsible for data processing, so that interested persons can exercise

cite the rights provided for in arts. 15 to 22 of the GDPR.

As proof of these statements, the claimant provided the evidence indicated in the “Facts” section, first point, of this agreement.

The person in charge of the denounced Brewery has presented allegations, accompanied a handful of photographs that include posters of a video-surveillance area and information on the processing of data and the possibility of exercising the rights provided in the GDPR.

v

The presumption of innocence must govern without exceptions in the legal system sanctioning and must be respected in the imposition of any sanctions, since the exercise of the ius puniendi in its diverse manifestations is conditioned to the

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game of evidence and a contradictory procedure in which they can defend themselves own positions. In this sense, the Constitutional Court in its Judgment

76/1990, of 04/26, considers that the right to the presumption of innocence entails:

"that the sanction is based on acts or means of proof of charge or incriminating of the reproached conduct; that the burden of proof corresponds to the one who accuses, without that no one is obliged to prove his own innocence; and that any insufficiency in the result of the tests carried out, freely assessed by the sanctioning, must be translated into an acquittal pronouncement.

The presumption of innocence governs without exceptions in the punisher and must be respected in the imposition of any sanction, whether criminal

or administrative (TCo 13/1981), since the exercise of the sanctioning right in any of its manifestations, is conditioned to the test game and to a contradictory procedure in which their own positions can be defended.

Pursuant to this principle, no penalty may be imposed on the basis of the guilt of the accused if there is no activity to prove the charge, which in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TCo Auto 3-12-81).

SAW

According to the arguments presented and once the evidence has been analyzed, has provided, it can be concluded that the cameras installed inside the Cervecería comply with current legislation by capturing a space proportionate to the intended purpose. spread out and keep the workers informed.

So it is appropriate to order the file of this procedure by the stated reasons.

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no accredited the commission of any administrative infraction.

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

In accordance with the provisions of article 50 of the LOPDGDD, the

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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction Contentious-administrative diction, within a period of two months from the day following

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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 LPA-CAP, the firm resolution may be provisionally suspended 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 city tada Law 39/2015, of October 1. You must also transfer to the Agency the documentation certifying the effective filing of the contentious-administrative appeal. Yes the Agency was not aware of the filing of the contentious-administrative appeal nistrative within two months from the day following the notification of the pre- This resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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