

□ Procedure No.: PS/00124/2019

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: CLAIMANT 1, (as shown in the ANNEX) Local Police of Alcobendas,
dated 10/1/2018, filed a claim with the Spanish Agency for the Protection of
Data, against the CITY COUNCIL OF ALCOBENDAS with NIF P2800600E (hereinafter,
the claimed). The reasons on which the claim is based are that it was initiated by Decree
***DECREE.1 of ***DATE.1, communicated on 05/10/2018, a disciplinary procedure.

It states that the file was initiated by a report made by a superior on the day
04/25/2018, directed, from the Sub-inspector to the Mayor of the Local Police of
Alcobendas. In said report, the Sub-inspector indicates that he performs the data comparison of the
activity sheet filled out by the claimant, with its position through a sign of
GPS, and which attaches the GPS positioning to said report.

Provides:

- Letter from the Sub-inspector to the claimant dated 04/11/2018, "clarification of activity file" "In
In relation to the activity sheet of 03/21 in which he provided a tow truck service, he requests that
"Make a report detailing the service provided and the place where it was done during the
said day between 3:30 p.m. and 4:10 p.m. and between 5:50 p.m. and 6:45 p.m.
- Response letter from the claimant dated 04/13/2018, indicating that it cannot qualify
accuracy and that the activity sheet was delivered at the end of the service.
- Partial copy of the document, "internal communication from the Sub-Inspector to the Mayor", of
04/25/2018. It begins: "The undersigned informs that on 03/22 the agent

(complainant) turned to me to ask for an explanation of why was performing more crane services than other colleagues, since he was doubting of their professionalism..." "At that time and since it is not a unit that depends habitually of the undersigned, I indicated to the Agent that I would review his activity records and the work carried out to see what was happening with it". "That when making the comparison of the data that he had put in his activity file, of the services that were recorded in GESPOL, as well as its positioning through GPS signals, only observed that on two of the occasions in which his activity record shows that he is carrying out services, first in the area of the Camino Ancho schools and in the second occasion reviewing places for the disabled in shopping centres, which is one of the tasks assigned to the crane, being the service that was appointed to this Agent in the reading of the service in the first of the occasions, he had not left the base urbanizations and in the second, its positioning goes outside the municipal area "Que Attached to this report is the GPS positioning of the agent, as well as a copy of the record of activity carried out on 03/21". A graph of the route in which they are seen is attached. the streets and date and time of the aforementioned day 03/21/2018, from 4:10 p.m. and in the 5:50 p.m. slot

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at 18.45. In it, the date on which it was extracted or its date cannot be determined.

request and delivery.

-Copy completed by hand, of physical points, route and hours that the claimant made, showing your identification number (activity sheet).

-On 06/08/2018, a statement of objections is formulated against the claimant received on

06/11/2018. Provides a copy signed by the Instructor "by Decree of ***DATE.1", It contains

indicates as most prominent:

a) According to the activity sheet prepared by the police officer, he provided towing services on the day 03/21/2018 in the time slot from 3:30 p.m. to 4:10 p.m. in a location that indicated, and according to the IDATAWEB program, GPS tracking, the information provided by the equipment communications personnel of the aforementioned police station him in other locations. The same takes place in the time slot 17.50 to 18.45.

b)

"The facts may constitute a serious disciplinary offense typified in the article 8.b) of the Organic Law 4/2010 of 05/20 of the disciplinary regime of the CNP."

"disobedience to hierarchical superiors or those responsible for the service due to legitimate orders or instructions given by them, unless they constitute an infringement manifest of the legal system."

-Copy of allegations to the statement of objections, dated 06/26/2018, in which, among others, it states manifesting the use for disciplinary purposes of the information of the IDATAWEB program provided by the personal communications team, aimed at security aspects, organization and coordination. It states that: "The sanction derives from the disciplinary file initiated at the expense of the Sub-inspector, who uses the GPS to locate the movements of the Agent and thus be able to demonstrate a breach of his orders" "The use of the GPS positioning data of the station that carries the referred Agent, they should not have been used to support a disciplinary file to the itself and was not warned at any time that it could be used in this way. The Agent must have been previously informed expressly and precisely of the use and consequences of obtaining geolocator data, understanding that they must be taken into account to ensure its integrity and security, and aimed at aspects of security, organization and coordination".

- Letter from the Instructor on the opening of the testing period, dated 09/05/2018, in which requests, among others, from the company INDRA a report on the operation of the system IDATAWEB on 03/21/2018, as well as the route made by the PDA 282 assigned to the claimant 1, in order to incorporate it into the file.

-Copy of sheet of 05/27/2014, delivery to the claimant of communications equipment: SAMSUNG OMNIA II brand terminal.

SECOND: After receiving the claim, on 11/12/2018, the General Subdirector of Data Inspection proceeded, in accordance with art. 9.4 of Royal Decree-Law 5/2018 (BOE 07/30/2018) to the transfer of the claim to the claimed, urging that it give response to CLAIMANT 1 and detailing what happened and the measures implemented so that facts such as those object of the claim were not repeated.

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THIRD: On 12/4/2018, a letter was received from claimant 1 in which he stated that it has received a written response from the respondent and that it indicates that the purpose of the IDATAWEB system is the management and coordination of patrols and agents, but in no case it becomes clear that it can be used for disciplinary use.

In addition, it is pointed out that the use of the system is "well known throughout the staff", although there is still no information on how to exercise the rights affected in the system use.

Attached is a copy of the aforementioned response, ref. ***REFERENCE.1, from which It also appears that the system was implemented in the local police of Alcobendas in April-May 2011 and serves for the "management and coordination of patrols and agents deployed by

the municipality for rapid management of resources and prompt assistance in case of need” ”The system records the GPS positions or cell of associated mobile terminals, and that with the registration of the station by the agent their positions are transmitted to be displayed on a map for the management of resources and their visualization in the computer terminals of the Communications Center and in the personal computers of the police commanders local. ”The data stored by the system is pseudonymized, and thus the system only collects the data of date and time, speed, those referring to GPS and GSM positions and always related to an alias, not being possible to individualize by person not authorized”.

The defendant argues with several sentences related to labor control concluding that “there has been no violation of their rights in relation to the protection of your personal data”

FOURTH: On 12/10/2018, a letter is received from the respondent indicating:

They provide a copy of the delivery of the document ref. ***REFERENCE.1 sent to claimant

a)

1, and the delivery signed by him on 11/26/2018.

They provide DPD report of 11/30/2018 in which it is recommended to the Directorate of the

b)

local police, who as responsible for the data processing of the devices of

geolocation, “give all agents an informative document on the use of the

device for work purposes, and that there is a record of having made this

communication”. They provide a letter of referral of the aforementioned report with the same date, to the

CLAIMANT 1.

FIFTH: On 01/16/2019 a letter is received from CLAIMANT 1 indicating that

has also received the report from the DPD and that the disciplinary procedure continues

Attaching a copy of the proposed resolution.

SIXTH: On 03/14/2019, the director of the AEPD admits the claim for processing.

SEVENTH: On 10/2/2019, CLAIMANT 1 requests to be informed about the

file, and a copy of the resolution is sent with exit record: 024128/2019.

(notification returned by mail) that corresponds according to the file with the

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notification of admission agreement for processing, and a copy of the aforementioned agreement is sent,

detailing that when the initiation agreement is signed and resolved, you will be informed.

EIGHTH: On 11/4/2019, the Director of the AEPD agrees:

“INITIATE PUNISHMENT PROCEDURE of WARNING to the

CITY COUNCIL OF ALCOBENDAS, for the alleged infringement of article 5.1.b) of the

RGPD, as indicated in article 83.5 a) of the RGPD.”

NINTH: On 11/12/2019, a letter is received from CLAIMANT 2,- identified in

GENERAL ANNEX-, which provides services as Local Police in Alcobendas,

stating:

By Decree ***DECREE.2 of ***DATE.2

a)

file was notified

sanctioning When requesting a copy of it, verify the existence of an incident report

extracted by the Sub-inspector addressed to the head of the Local Police, attaching photographs of his

geographic positioning carried out through a GPS called IDATAWEB. East

written was raised to the Councilor for Human Resources for the opening of the file.

Complaint that you have not been informed of the existence of the geolocation device of

your personal communications equipment, nor the use of treatment that could be given, in this case to be sanctioned, obtaining the data before starting the procedure discipline itself.

b)

local before the claimed, in the case of CLAIMANT 1

He alludes to having knowledge of the name and surname of another claimant, police

Provide a copy of:

1- Notification of disciplinary file, of *** DATE.2 that begins "having this department had knowledge of what happened on 05/17/2019 in relation to the delay in the coverage they had to carry out on the College ***COLEGIO.1 at 16:40 the patrol that carried out the service with the indicative ***INDICATIVE.1 composed of the agent ***AGENT.1. The claimant, and the failure to account for the same in report required by a superior. In the SEEN section, it is indicated "The report issued on the incidence in which the non-compliance in time of the service is evidenced programmed, as well as its disobedience when accounting for it in the required report by his superior."

He is charged with a serious offense under article 8.b of Organic Law 4/2010 "disobedience to hierarchical superiors or those responsible for the service due to orders or legitimate instructions given by those, unless they constitute a manifest infringement of the legal system."

1- Document dated 05/17/2019, internal communication from the Sub-Inspector referred to by the claimant to the Chief Intendant of the local police entitled "incidence report on shift agents...(one who is neither claimant 2, nor 1, and ***AGENT.1, the claimant 2).

It is indicated that "I inform that today 05/17/2019, "performing the reading of north base service, being 15:40 through the station, the undersigned has indicated

agents ***AGENT.2 and ***AGENT.1 who had their activity sheet based on

north, an order to go to the School at 16:40 ***COLEGIO.1. "Being 16:41

being the subscriber in the school *** COLEGIO.1 when not observing the patrol there,

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It requires information about their location and why they were not in the aforementioned school. That

***AGENT.2's response is that they were addressing him. that being the

16:45 when checking the controls that the patrol was not regulating the school, and that the

influx of parents to pick up their children was great, they proceed to regulate it themselves

until the arrival of the patrol at 16:53-as shown by the IDATAWEB.

That the undersigned requests the agent ***AGENT.1 verbally at the school a

report in writing, on the reason for his delay, returning to reiterate it by mesh to the

agent ***AGENT.2, delivering these a report, which does not say the reason for their delay.

That at 6:26 p.m. the Deputy Inspector meets with agents ***AGENTE.2 and ***AGENTE.1

to collect the aforementioned report, and when rereading it and verifying that it does not state the reason for its

delay, the agent ***AGENTE.2 indicates that he is not going to put it, since being a report

officer, if I said something against you, it would violate your right to be presumed innocent. What in

At that moment, the Sub-inspector tells them that they are disobeying an order, since

requested was that they explain the reason why they were not at the indicated time

in the aforementioned school, and not that he had assigned them the same. Agents are informed that

knowledge of what happened will be given for the appropriate purposes. That to this report

attached, the positioning of the agents, where it is observed that they leave the base

urbanizations at 4:43 p.m. and who arrive at school ***COLEGIO.1 at 4:53 p.m.

arriving late at the entrusted school and not knowing what these agents have done

from its incorporation to the service until its departure from urbanizations base 1 hour 13 minutes later".

It is accompanied by a graphic map of the IDATAWEB route of the agent ***AGENTE.1 of 05/17/2019 from 3:30 p.m. to 5:15 p.m. with dates and times and geographical points in which It was.

2- Email of 05/28/2019 sending from Police Headquarters to City Hall

Alcobendas, with a pdf file "incidence report" of claimant 2 with the literal "Se attached report on what happened on 05/17/2019 in the agents' work shift, summoning claimant 2 to proceed with the opening of a disciplinary file to both agents, appointing instructor."

3- Copy of claimant 2's document presented at the Alcobendas town hall on

09/17/2019 proposing evidence, urging, among others, that "the moment exact date in which the IDATAWEB images that appear in the document were requested and obtained. report issued as document 4 "as well as certifying the purpose of the treatment of GPS location data.

CLAIMANT 2's claim was also transferred to the respondent and resulted admitted for processing on 01/13/2020. For keeping identity in the object of the claim, both claims are joined and resolved in this proceeding.

TENTH: On 11/19/2019, the respondent reiterates what has already been stated, adding:

The reason for the use of the GPS by the respondent "was to demonstrate the

1)

compliance with a superior hierarchical order. The facts reported by

CLAIMANT 1, occur before the entry into force of the RGPD, and must apply the LOPD and its Regulations.

2) In application of article 90 of the LOPDGDD, the city council has adapted to the

new regulations, approving General Order 027/ of 11/16/2019 of the Chief Intendant of the

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local police. The sheet of the order is provided in which it is indicated "... in relation to the new communications equipment delivered, it is reported:

"The prohibition of using personal communications equipment for purposes other than to the development of work activity and outside of their working day. Also, it is reported that the system allows location in real time of the agent's position, of the rest of the users, and from communication equipment of the other users that at that moment are connected, that the positions are stored in a database included in the treatment "local police interventions" that allows to consult positions and routes of each user during the working day from the start of the equipment to its disconnection. The person responsible for the treatment is indicated, and that the purpose of the device is the control, management and coordination of patrols and agents deployed by the municipality to optimization of resources and prompt assistance in case of need and as part of management of employment relationship, data may be extracted from the device in order to verify the fulfillment of the entrusted tasks and verify if they coincide with the work reports and activity sheets and may even be used for disciplinary purposes in case of verify noncompliance. You are informed of the possibility of exercising your rights and refers to additional information on the web page it indicates.

3) It also provides a copy of the document signed by an agent in order to prove that has communicated to those affected. In the copy he provides, it is a form dated the 11/15/2019, by hand by the agent, in which it is reported in the same terms as

contains in the general order mentioned.

ELEVENTH: On 03/06/2020, it is AGREED to start a practice period of

tests, practicing the following:

1. The claims filed by the two claimants are deemed reproduced, and

your documentation, the documents obtained and generated by the Services of

Inspection

2. Likewise, it is considered reproduced for evidentiary purposes, the allegations to the agreement

of initiation presented by the claimed, and the documentation that accompanies them.

3. A claimed person is also requested to report or provide within a period of ten days:

What does the system that records the positioning of the vehicles consist of and how does it work?

a)

agents who provide service in that entity (what are the personal teams of

communications that are delivered to the agent and serve to control their activity in the

moments of the events denounced by the claimants, allude to PDA, terminal brand

SAMSUNG OMNIA II. On the other hand, in General Order 027/ of 11/16/2019 of the Mayor

local police chief mentions the “new communications equipment delivered”, and

It is questioned whether these are the same used in the case of the claimants.

It is also requested that they clarify whether the system allows each agent to be able to

real time, visualize from their computers where the rest of the users who

at that time they are serving, or if that work is performed by another

agent.

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b)

In their allegations they indicate that the reason for using the geolocation system of the GPS system was to "demonstrate non-compliance with an order from a hierarchical superior", if although this is not clear from the brief of 04/25/2018, regarding CLAIMANT 1 "communiqué interior of the Subinspector to the Intendant", begins: "The undersigned informs that on 03/22, the agent (claimant) approached me for an explanation of why was performing more crane services than other colleagues, since he was doubting of their professionalism..." "At that time and since it is not a unit that depends habitually of the undersigned, I indicated to the Agent that I would review his activity records and the work carried out to see what was happening with it". "That when making the comparison of the data that he had put in his activity file, of the services that were recorded in GESPOL, as well as its positioning through GPS signals, you are requested that report:

1-Detail, why if the complaint of CLAIMANT 1, motivated because "he was assigned many crane services, more than their colleagues", instead of valuing the number, adequacy and reason why you perform so many services or if you exceed the average compared to other troops, gave rise to the verification of superior to through checks of the effective performance of the service, if this is usual and if They consider it proportionate. Indicate with the regulations in force, including the order approved, if it allows in any case to collect data from the device in In any case, if the causes have to be motivated or if there is discretion, and detail if there is or there could be other measures to achieve the end of the fulfillment of the orders given to agents.

2-Indicate if it existed at the time of the complaints analyzed here, a protocol by which a data request was requested from the location system of GPS, which people and in what cases could request such data.

c)

Regarding the report of the GPS positioning of the CLAIMANT agent 1 with the copy of the activity sheet carried out on 03/21", they are asked to report the date on that was requested, a copy of the document sent for it, a copy of the response document with the Report for dates and reasons.

Regarding the report of the GPS positioning of the CLAIMANT agent 1 and the

d)

having provided a copy of the "Instructor's Letter on the opening of the period of evidence, dated 09/05/2018, in which it requests, among others, from the company INDRA a report on operation of the IDATAWEB system on 03/21/2018, as well as the tour carried out by the PDA 282 assigned to the claimant, in order to incorporate it into the file", you are requested copy of it.

and)

If there was any type of document delivered to the troops in which they had been informed before the days that the alleged violations took place, of the means of verification of the provision of the service, request of said means, cases in which can request, official who has to request it, and exercise of rights to said data.

After the period granted, no response was received.

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TWELFTH: On 07/27/2020, a resolution proposal is issued, with the literal:

"That by the Director of the Spanish Agency for Data Protection, the

with a WARNING to the CITY COUNCIL OF ALCOBENDAS, for an infraction of the

Article 5.1.b) of the RGPD, in accordance with article 83.5 of the RGPD”.

Against them, no allegations are received.

PROVEN FACTS:

CLAIMANT 1 addressed his boss, Deputy Inspector, on 03/22/2018 a request for

1)

explanation of why he was performing more towing services than others

companions. The Sub-Inspector told him that he would review his activity sheets and the work

carried out to see what was happening with it”. This check was made

comparing what claimant 1 had put in his activity sheet for the day's services

03/21/2018, recorded in the GESPOL application, with its positioning through a signal

GPS. With said comparison, the Sub-inspector observes that what he declares in the record is not

corresponds to what the GPS marks that has recorded the route of the day from 4:00 p.m.

10 and from 5:50 p.m. to 6:45 p.m. For this reason, a disciplinary procedure was initiated against

CLAIMANT 1 who counts as antecedents the written internal communication of the

Deputy Inspector to the Mayor of 04/25/2018 in which he explains the above.

The activity sheet completed by CLAIMANT 1 indicates that he provided services of

crane on 03/21/2018 in the time slot from 3:30 p.m. to 4:10 p.m. in a location that indicated, and

According to the IDATAWEB program, GPS tracking, the information provided by the

personal communications equipment of the aforementioned police officer places him in other locations. It

The same happens in the time slot from 5:50 p.m. to 6:45 p.m.

The respondent has not provided specific information requested in tests on the equipment

communications personnel assigned to the agents that allows their data to be correlated in

the provision of the service with its geographical position.

two)

CLAIMANT 1 stated that the respondent had not informed him of the end of control

that could be given to the GPS system operated by the IDATAWEB system through the

assigned individual communications equipment, and the respondent has not provided accreditation having done it.

3)

Within the disciplinary procedure for CLAIMANT 1, the instructor in the investigation phase tests that start on 09/05/2018, incorporates the monitoring data to said agent of the day 03/21/2018.

4)

On the occasion of the transfer of the claim of CLAIMANT 1 to the respondent, the latter sent a letter informing you that the purpose of the IDATAWEB system is the management and coordination of patrols and agents, the use of the system implemented in 2011 is "notoriously

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known by the entire staff", and which is used for the "management and coordination of patrols and agents deployed by the municipality for rapid management of resources and prompt assistance in case of need" "The system registers the GPS positions or terminal cell associated mobile phones, and that with the registration of the station by the agent, their positions to be displayed on a map for resource management and display on the computer terminals of the Communications Center and in the personal computers of the local police commands.", "Storing the data."

5)

The respondent provided on 12/10/2018 a DPD report dated 11/30/2018 in which recommends to the local Police Directorate, as the data controller of geolocation devices, which "provides all agents with an informative document

information on the use of the device for work purposes, and that there is a record of have made this communication". CLAIMANT 2 also a local police filed a claim tion on 11/12/2019, which was moved to claimed. After the signing of the agreement to start this procedure is processed together with the same to keep identity in the object of the claim- tion. The facts that it reveals are that a disciplinary procedure was opened on 06/13/2019 due to events that occurred in his provision of service on 05/17/2019 and contributing his boss, Sub-inspector to the chief quartermaster, the GPS tracking of his personal communications equipment at the time the service was being rendered that day, to verify compliance with the traffic regulation order in one hour and in a certain place, "although the undersigned of the report was in that place, he verifies with the IDATAWEB GPS tracking system that CLAIMANT 2 arrives at 16:53 at di- what a point The tracking system reveals that they had to be at a point assigned to at 4:40 p.m., and left a different one at 4:43 p.m. There are graphics of the map with the route in the time slot 3:30 p.m. to 5:15 p.m. A report on these events was sent from Headquarters police to the City Council on 05/28/2019 in order to initiate a disciplinary procedure. CLAIMANT 2 states that all this without being previously informed of said use, effects, and rights associated with it.

6)

The defendant approved in the course of the procedure, General Order 27, of 11/16/2019, on the use of personal communications equipment and its location, detailing that the data is stored in a database included in the "interventional" treatment nes local police" that allows to consult positions and routes of each user during the working day. The data controller is informed, and that the purpose of the provision tive is the control, management and coordination of patrols and agents deployed by the municipality for optimization of resources and prompt assistance in case of need and as part of management tion of the employment relationship, data may be extracted from the device in order to

bar the fulfillment of the entrusted tasks and verify if they coincide with the parts of work and activity sheets and may even be used for disciplinary purposes in case to verify its non-compliance". You are informed of the possibility of exercising your rights and refers to additional information on the website.

It also provides a copy of the document signed by an agent in order to prove that has communicated to those affected, dated 11/15/2019.

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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 what is established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this process.

II

STC 292/2000 states that "... the content of the fundamental right to protection of data consists of a power of disposal and control over personal data that empowers empowers the person to decide which of their data they provide to a third party (...) these powers disposition and control over personal data, which constitute part of the fundamental right fundamental to data protection is legally specified in the power to consent to the collection, obtaining and access to personal data, its subsequent storage and treatment, as well as its use or possible uses, by a third party, be it the State or an individual", that is, to know who, why and what data is going to be processed. This allows the affected party, in this

In this case, local police officers exercise control over your personal data (self-determination).

informational nation). The duty of prior information forms part of the essential content of the

right to data protection, since it is an essential complement to the treatment

data. The duty of information on the use and destination of personal data is in-

intimately linked to the general principle of legal authorization of the treatment and exercise

of rights, because if its purpose and recipients are not known, it can hardly be exercised.

You have no right to your own data.

Article 90 of the LOPDGDD indicates

"1. Employers may process the data obtained through data collection systems.

geolocation for the exercise of control functions of workers or

public employees provided for, respectively, in article 20.3 of the Statute of the

Workers and in the legislation of public function, provided that these functions are exercised

within its legal framework and with its inherent limits.

2. Previously, employers must inform expressly, clearly and

unequivocal to public workers or employees and, where appropriate, to their representatives,

about the existence and characteristics of these devices. They must also

inform them about the possible exercise of the rights of access, rectification, limitation

of treatment and suppression."

The same information and authorization system is established in the

video surveillance (article 89) of said law.

In this case, according to the respondent, the purpose of data processing was initially

especially in 2011 in the management and coordination of patrols and agents, and it was the purpose that

still had when the two claimants are verified through the system

IDATAWEB GPS with their individual teams assigned in the performance of their tasks

professionals.

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This purpose, as can be seen, is related to the security of surveillance, but no eventual use of labor control was established as a measure for compliance with the assigned tasks. This jump occurs during the procedure, implanting this control in November 2019.

Usually, before the irruption of technologies, the facts could be verified.

two usually by witnesses, documents, etc., assessing statements in the processes and extension of it. Currently, technologies such as video surveillance, geolocation, tion, use of mobile phones are configured as technological elements of great importance in the development of the employment relationship, especially to verify the functions to be developed llar and as a means of controlling the obligations assigned to employees. Therefore, the re- results of employing in the past tense, once the events have occurred, systems proceeding technology such as previous recordings of images, sounds, fingerprints, data of geolocation etc that correlate what happened earlier in the procedure must be evaluated considering various aspects. The use of information technologies multiplies the possibilities of labor control, and obliges to take into account the respect for the rights workers, to adopt control measures that are proportional and respect their dignity, their right to data protection and their private life. The absence of The same will determine a possible treatment not adjusted to the protection regulations of data.

The availability of technology as a means of verifying compliance with the tion in this case in the provision of public services requires as a counterweight some guarantees so that its use and purpose is not unilateral depending on what is convenient, or in

contrary to expectations, and without taking into account the rights of those affected, among that also plays a certain role “legal certainty, responsibility and inter-dictation of the arbitrariness of public powers” together with the fundamental right in the use of information technology or technological measures on said control of the provision that gen the literal of article 18.4 of the Spanish constitution: "The law will limit the use of information to guarantee the honor and personal and family privacy of citizens and the full exercise of their rights."

Undoubtedly, it is not the same to verify behaviors such as labor ones, with non-technological, than with traditional means. To specify, for example, the version of a employee can use the images of a video surveillance camera or a system GPS, and can be considered a test that verifies the version of the administration, gaining a quasi-full conviction with his own means contrary to that of the employee. It can be carried out considering in the first place that it is the employer who can impose the means to control the activity, taking into account in its implementation the proportionality of the measure in the system and the dignity of the employees. Thus, you must prove in your analyzes if you are going to use the system to control all the time of the labor delivery. general, or only some services, if it is to be used to reprimand all kinds of behavior, from from mild to very serious, or only those considered to be a risk to public safety. ca, defining the situations, and motivating and arguing the reasons, there may be areas in which surveillance throughout the day and to control all kinds of public orders it might not be proportional.

Regarding the type of data related to the employee and work, mediating location services, control of its development, it is worth taking as a point of departure what is indicated in principle number 16 of the Annex of the Recommendation of the Committee of Ministers of the Council of Europe, adopted on 04/01/2015, and referred to the treatment of personal data in the employment context. It states that the equipment that

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reveals the location of employees should only be entered if proves its need for the purpose pursued by the employer and its use is not lead to continuous monitoring of workers, since this monitoring should not be the purpose, but only an indirect consequence of the adoption of a measure conducive to guaranteeing the protection of production, health or safety or the efficient functioning of the organization.

As part of the proportionality in the implementation of the system, the person in charge must justify the specific reasons for the introduction of the control measures that intends to implement, and whether or not it is possible to use other less intrusive measures for said control, dealing with the balance between the interests of the employer and the right of the employees. two to the respect of his private life. It must assess and document that the implantation in the positions that it considers applicable is adequate, necessary and suitable, in relation to the fines.

In the implementation of the system it can be considered that the use of the system is more necessary if, for example, a motivation is previously established to request them covered in the internal regulatory protocol that can be created, when there are security reasons publishes related to the actions of the agents, meaning that it can

The use of the system will not be necessary or proportional when there are other means of verification. tion of the facts, or when they can be proven with other instances.

As an example, the constitutional court in its Judgment no. 98/2000 of 10/04

indicates: "business organizational faculties are limited by the rights

fundamental rights of the worker, the employer being obliged to respect those (STC

292/1993, of October 18, F.F. 4). This Court has been maintaining that, since the

prevalence of such rights, their limitation by business powers only

may derive from the fact that the very nature of the contracted work implies the

restriction of the right

Also, as indicated by the STC number 29/2013 of 11/02 in its foundation of

law VII: "In conclusion, it should not be forgotten that we have invariably established and

constant that the business faculties are limited by the rights

fundamental (among many others, SSTC 98/2000, of 04/10, F. 7, or 308/2000, of 12/18, F.

4). For this reason, just as the public interest in sanctioning administrative infractions is

insufficient for the Administration to steal from the interested party information related to the

file and its data, as provided in art. 5.1 and 2 LOPD (STC 292/2000, of 11/30, F. 18),

Nor can the private interest of the employer justify that the processing of data is

employee against the worker without prior information about the labor control placed

in practice. In the workplace, to express it in other terms, there is no reason that

tolerate the limitation of the right to information that integrates the ordinary coverage of the right

fundamental of art. 18.4 EC. Therefore, it will not be enough that the processing of data

is in principle lawful, because it is protected by the Law (arts. 6.2 LOPD and 20 LET), or that

may eventually result, in the specific case in question, proportionate to the end

pursued; business control in this way, rather, although it may occur, it must

also ensure proper prior information."

The establishment and use of the data processing system derived from the GPS system

for labor control additionally leads to the establishment of technical and organizational measures

for the processing of data for said purposes. This would include, among others, from protocols

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to keep the files longer than the time originally established, until the motivations

recording requests by the specific person in charge of requesting the recordings.

data and deliver them, as well as data security measures.

If employees are not informed of the tools used to control their

performance, if several can be used, if those that the employer considers can be used

convenient without giving a specific reason, employees have no expectation

about said use or about its consequences, being able to violate your right to protection

of data.

Once the system for the use of recordings has been implemented, with the desirable inter-

vention of employee representatives, and their technical and organizational measures

having informed those affected, the system can be used for the modalities and

purposes established therein

III

In the present case there is a processing of personal data of the

two claimants in the development of their professional work provided to the public employer

co, City Hall in this case through the communications equipment they use, without

that it be proven that the agents were informed of the eventual use of the system so as to

verify compliance with the tasks performed, its original purpose being a different one.

In the first case, the fact that the claimant files a complaint for entrusting

always the same service, and the unrelated superior evaluates the performance

pleo of the service and verifies the movements of part of their working day

In the second case, it can also be seen that in order to verify the absence of the place where

claimant 2 was to provide services, there were other personnel who could attest that no

was there, using the GPS system to also verify where it was exactly to

that time, and what time it arrives at the assigned point. The collection and use of data of personal data

In addition, it must respect the principles of adequacy and relevance, limiting the current

tion to the specific purposes for which they were collected, of which it must be in-

formed the holder from which they are collected.

It is verified that until recent dates, the fulfillment of the development of the tasks

entrusted in the relationship with the agents was not verifiable by technical means

as accurate as GPS can be, as it can be now. However this

interference in the affectation of the right of data protection to the affected subjects without

having been previously informed, and there being a different enabled use, it means that the

claimed incurs in the infringement of article 5.1.b) of the RGPD that

points out:

"1. The personal data will be:

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,

section 1, further processing of personal data for archiving purposes in the interest

public, scientific and historical research purposes or statistical purposes shall not be considered

incompatible with the original purposes ("purpose limitation");"

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In this case, it did not appear at the time the events occurred, that the

use of geolocation data is used to corroborate service reports or organizations

dens entrusted to the agents and here they have been used, in ways not proportionate

by the factual assumptions in which they occur, before opening any immediate action

chest related to punishable acts, and not being provided for that control

labor produced, for which the double infraction object of the claims is accredited.

This data of correspondence between position through the GPS of the employees in the performance of their functions have been obtained, and preserved over time to treat, process file and resolve disciplinary files.

It should also be noted that it is not disputed whether the agents knew that the system had GPS, which possibly they did know, but the use of the system was can do, after the guarantees established by the LOPDGDD. The reasonable expectations employees cannot foresee that said system will be used for the control of labor activity, counting as it is accredited, that originally its purposes they are the security of the patrols and the people. Much less than before a complaint of being- vice the aforementioned system is used.

The use of the geolocation of the communications system assigned to the claimant, like the rest of the Agents, can be used as a means of security for the people, agents or the vehicle, in critical or emergency situations or to service organization. However, in this case it has been used in the workplace with consequences of initiation of disciplinary proceedings, when the data is extracted by a higher and then integrate into the aforementioned procedure. This has been done for obvious purposes. to verify compliance with the instructions and support the sanction more strongly.

The claimants had not been informed prior to extraction that correlates your device with your data and your movements in the provision of the service that could be subject to such verification, nor the manner of exercising their rights and other of elements that are prescribed in article 13 of the RGPD associated with said treatment.

If it had been decided that in order to control the development of the activity by the agents, control of geographical positions in relation to the fulfillment of orders is

accurate or convenient the GPS system, should have been informed of the use,

consequences, purpose, treatment and rights.

In addition, reference is made to the necessary compliance with principle 21 of the

Recommendation, which imposes the obligation of prior information on employees and the

consult their representatives, without prejudice to the necessary compliance with the rest of the

requirements mentioned in it.

It is worth remembering what is indicated in this regard by the jurisprudence, which comes

appreciating as one of the criteria to determine if there is room for corporate control over

the means provided to the worker, the prior information or warning of the

employer to the worker about their possibilities of use and control. Thus, it is worth mentioning the

Judgment of the Labor Chamber, Section 1 of the Supreme Court of 09/26/2007,

appeal for the unification of doctrine no. 966/2006, which highlights the

Next:

“ Therefore, what the company must do in accordance with the requirements of good

faith is to establish previously the rules of use of those means - with application of

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absolute or partial prohibitions – and inform workers that there will be control

and of the means to be applied in order to verify the correctness of the uses, as well

as well as the measures to be adopted in its case to guarantee the effective

labor use of the medium when necessary, without prejudice to the possible application of

other preventive measures, such as the exclusion of certain connections. Of

this way, if the medium is used for private uses contrary to these prohibitions and

with knowledge of the applicable controls and measures, it cannot be understood that, by carry out the control, "a reasonable expectation of privacy" has been violated in the terms established by the judgments of the European Court of Human Rights of June 25, 1997 (Halford case) and April 3, 2007 (Copland case) to assess the existence of an injury of article 8 of the European Convention for the protection of human rights .

All this means that the geolocation of the worker should not constitute only one purpose of data processing, being necessary to specify what is the specific purpose that justifies this treatment, which will allow us to analyze whether the collection of data that implies a special interference in the activity of the employee is adjusted to the principle of proportionality

IV

Regarding the allegation of the respondent that the facts of claimant 1 occurred before the entry into force of the RGPD, specifically for the conduct carried out that is analyzes of 03/22/2018, it must be indicated that the treatment of the data in this case has permanence from the moment there is constancy, not only because the deputy inspector requested these data, without knowing the date, because he has not collaborated in the clarification of the facts in the testing period, but because it is proven that incorporated into the file by the instructor on 09/05/2018 and continues to have effects in the same.

v

Article 58.2 b) and d) of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this

Regulation;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a certain way and within a specified period;

The imposition of this measure is compatible with the sanction of warning, according to

The provisions of the art. 83.2 of the GDPR.

Article 83.5.a) of the RGPD indicates

"5. Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of

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a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, choosing the highest amount:

the basic principles for the treatment, including the conditions for the

a)

consent under articles 5, 6, 7 and 9;"

Article 77.2 of the LOPDDD deals with the prescription of the infraction, which

indicates:

"Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose a

substantial violation of the articles mentioned therein and, in particular, the

following:

The processing of personal data violating the principles and guarantees

a)

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

Article 83.7 of the RGPD indicates:

“Without prejudice to the corrective powers of the control authorities under the

Article 58(2), each Member State may lay down rules on whether it can,

and to what extent, impose administrative fines on authorities and public bodies

established in that Member State.

The Spanish legal system has chosen not to sanction with a fine those

public entities, as indicated in article 77.1. c) and 2. 4. 5. and 6. of the

LOPDDGG:

"1. The regime established in this article will apply to the treatments that are responsible or in charge:

c) The General Administration of the State, the Administrations of the communities autonomous and the entities that make up the Local Administration.

2. When those responsible or in charge listed in section 1 committed

any of the infractions referred to in articles 72 to 74 of this organic law,

the data protection authority that is competent will issue a resolution sanctioning

to them with warning. The resolution will also establish the measures that

appropriate to adopt so that the conduct ceases or the effects of the infraction are corrected.

would have committed

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which depends hierarchically, where appropriate, and those affected who had the status of interested, if any.

4. The data protection authority must be notified of the resolutions that fall in relation to the measures and actions referred to in the sections previous.

5. They will be communicated to the Ombudsman or, where appropriate, to the analogous institutions of

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the autonomous communities the actions carried out and the resolutions issued to the protection of this article.

6. When the competent authority is the Spanish Data Protection Agency, this will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the responsible or in charge of the treatment that had committed the infraction.”

Therefore, in accordance with the applicable legislation and the infringement is proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the CITY COUNCIL OF ALCOBENDAS, with NIF P2800600E, by an infringement of article 5.1.b) of the RGPD, typified in article 83.5 a) of the RGPD, a penalty fine.

SECOND: NOTIFY this resolution to the CITY COUNCIL OF ALCOBENDAS, attached GENERAL ANNEX.

THIRD

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the OMBUDSMAN, of

FOURTH: 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 LPACAP, 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 from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, with 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 two months from the day following the notification of this act, according to the provisions of 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, the firm decision may be provisionally suspended in administrative proceedings if the interested party states its intention to file a contentious-administrative appeal. If this is the

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 Registry Electronic Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1 october. You must also transfer to the Agency the documentation that accredits the effective filing of the contentious-administrative appeal. If the Agency did not have knowledge of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

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Sea Spain Marti

Director of the Spanish Data Protection Agency

GENERAL ANNEX

claimant 1 AAA

Claimant 2 B.B.B.

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