

936-031219

Procedure No.: PS/00397/2019

RESOLUTION R/00028/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00397/2019, instructed by the Agency

Spanish Data Protection Agency to ZHANG BORDETA 2006, S.L., given the complaint

presented by D.G. CIVIL GUARD - POST OF TÁRREGA, and based on the

following,

BACKGROUND

FIRST: On November 19, 2019, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against ZHANG

BORDETA 2006, S.L. (hereinafter, the claimed party), by means of the Agreement

transcribe:

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948-230919

Procedure no.: PS/00397/2019

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for the Protection of

Data, and based on the following

FACTS

FIRST: On June 4, 2019, it had entry in this Spanish Agency of

Data Protection a document presented by D.G. CIVIL GUARD - POSITION OF

TÁRREGA (*hereinafter, the claimant), through which the claim is made

against ZHANG BORDETA 2006, S.L. with NIF B25616962 (hereinafter, the claimed one),

for the installation of a video surveillance system installed in AVENIDA ARTESA 27,

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BORDELA, LLEIDA, with indications of a possible breach of the provisions in art. 5.1 c) GDPR.

The reasons that support the claim and, where appropriate, the documents provided by the claimant are the following:

“Disproportionate recording of public thoroughfares, lacking informative form inside the establishment” (folio nº 1).

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 result of this action is describes below.

As stated on the official signs, the installation company is HIPERTEC and his telephone number is 973 238677.

The range of the cameras is barely 4-5 meters, since they are located focused from the ceiling down. The company has two businesses together, one shop and a restaurant bar. The restaurant has one with a detail of the bar, where only the position of the employees and the boxes are appreciated. Another one focusing on the terrace outside, with hardly any visibility, beyond it. Another of an overview of the restaurant dining room and another general view of the bar and bar tables. Trade It has 3 cameras, one with an overview of the store from the back to the door, another side view of the store near the entrance and another one in the cashier area and

counter.

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THIRD: The claim was admitted for processing by resolution dated

09/24/2019.

FOURTH: It is associated with the reported in the operating system of this Agency

a previous complaint in E/07286/2018 where he was widely informed of the

regulations on data protection, warning you about not obtaining images of

on public roads, as well as the obligation to have a form available to

the clients.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

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

Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the

LOPDGDD, the Director of the Spanish Data Protection Agency is

competent to initiate and resolve this procedure.

II

In the present case, we proceed to examine the claim dated 06/04/19 in

where the following is transferred as the main fact:

“Disproportionate recording of public thoroughfares, lacking

informative form inside the establishment” (folio nº 1).

The behavior described was framed in the content of art. 5.1 c) RGPD that

provides the following: “Personal data will be:

c) adequate, relevant and limited to what is necessary in relation to the purposes

for which they are processed ("data minimization");

From the images provided, it is confirmed that images of the sidewalk were obtained

public, outside the cases legally permitted, by exceeding the rights of a

particular when installing this type of device.

The art. 77 section 5 Law 39/2015 (October 1) provides the following:

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“The documents formalized by the officials who are recognized as

condition of authority and in which, observing the legal requirements

corresponding the facts verified by those are gathered will prove of

unless proven otherwise”.

The installation of security camera(s) in private spaces may not

obtain images of public spaces.

For the control and protection of the establishment, only the cameras are necessary

interiors, not being able to control the public space attached to its establishment, even

when you have tables for customers (as).

In accordance with the foregoing, the processing of images through a video surveillance system, to be in accordance with current regulations, must comply with the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, it can only be installed by a private security company that meets the requirements contemplated in article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of people who are outside the private space where the video surveillance system is installed, since the treatment of images in public places can only be carried out, unless Government authorization concurs, by the Security Forces and Bodies. Either spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or in

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inside, it may be necessary to ensure the purpose of security recording of a portion of the public highway. That is, cameras and camcorders installed with security purposes may not obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said

purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in the articles 12 and 13 of the RGPD, resulting from application -by not contradicting the provisions of the aforementioned Regulation-, the manner provided for in article 3 of the Instruction 1/2006, of November 8, of the Spanish Agency for the Protection of Data, on the Processing of Personal Data for Surveillance Purposes through Camera or Video Camera Systems.

Specifically, it must be placed in the video-monitored areas, at least one informative badge located in a sufficiently visible place, both in spaces open and closed, in which at least the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided for in these regulations. Likewise, it must be kept available to the affected the information referred to in the aforementioned RGPD.

- The person in charge must keep a record of treatment activities carried out under its responsibility, including the information to which it makes reference article 30.1 of the RGPD.

- The installed cameras cannot obtain images from private space of third party and/or public space without duly accredited justified cause, nor can affect the privacy of passers-by who move freely through the area. No this allowed, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without just cause.

- In no case will the use of surveillance practices be admitted beyond the environment object of the installation and in particular, not being able to affect the spaces surrounding public, adjoining buildings and vehicles other than those accessing the guarded space.

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In relation to the foregoing, to facilitate the consultation of interested parties, the

Spanish Agency for Data Protection offers through its website

[<https://www.aepd.es>] access to data protection legislation

including the RGPD and the LOPDGDD (section “Reports and resolutions” /

“normative”), as well as the Guide on the use of video cameras for security and other

purposes, as well as the Guide for compliance with the duty to inform (both

available in the “Guides and tools” section).

It is also of interest, in case of carrying out data processing of low

risk, the free tool Facilita (in the “Guides and tools” section), which

through specific questions, it allows to assess the situation of the person in charge

regarding the processing of personal data that it carries out, and where appropriate, generate

various documents, informative and contractual clauses, as well as an annex with

indicative security measures considered minimal.

IV

The claim is based on the Complaint transferred to this body by the

State Security Forces and Bodies that confirms that with the cameras

installed in the establishment "takes over the public sidewalk" without just cause.

The art. 83.5 RGPD provides the following: “Infringements of the provisions

following will be sanctioned, in accordance with section 2, with administrative fines

EUR 20,000,000 maximum or, in the case of a company, an amount

equivalent to a maximum of 4% of the total global annual turnover of the

previous financial year, 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 are taken into account:

-the nature of the infraction, by obtaining images of passers-by permanently, outside the permitted cases (art. 83.2^a) RGPD).

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-The negligence of the infraction, having been widely informed by this

Agency of the measures that it had to comply with, showing total passivity when it came to adjust the system to the regulations in force (art. 83.2 b) RGPD).

Based on the foregoing, it is considered correct to propose a sanction encrypted in the amount of €6,000 (Six Thousand Euros), located on the lower scale for this type of infractions.

The foregoing without prejudice to proving the removal of the outer chamber, in such a way so that public space is not captured, being able to only control the interior of its establishment, excluding "reserved" areas.

You must have an information form available to the client(s) who could obtain it, having to keep a copy of it at the disposal of the Forces and Security Bodies that may require it in inspections of the establishment (vgr. You can download it for free from the AEPD website www.aepd.es).

It is warned that not meeting the requirements of this organization may be

considered as an administrative offense in accordance with the provisions of the RGPD,
typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the
opening of a subsequent sanctioning administrative proceeding.

Therefore, according to the above,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START SANCTIONING PROCEDURE against the ZHANG entity

BORDETA 2006, S.L., with NIF B25616962, for the alleged infringement of art. 5.1 c)

RGPD, by having a video surveillance camera that records the public sidewalk,

infraction typified in art. 83.5 a) RGPD, being punishable in accordance with the
art. 58.2 GDPR.

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SECOND: APPOINT A.A.A. as instructor, and secretary, if applicable, B.B.B.

indicating that any of them may be challenged, as the case may be, in accordance with
established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime
Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the
claim filed by the claimant and its documentation, as well as the
documents obtained and generated by the Subdirector General for Inspection of
Data, all of them part of the administrative file.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1
October, of the Common Administrative Procedure of the Public Administrations

(LPACAP, hereinafter), the sanction that could correspond would be €6,000 (Six Thousand Euros), without prejudice to what results from the instruction.

Likewise, the imputed infraction, if confirmed, may lead to the imposition of measures in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD.

FIFTH: NOTIFY this agreement to the entity ZHANG BORDETA 2006, S.L., granting him a hearing period of ten business days to formulate the pleadings and submit any evidence you deem appropriate. In his writing of allegations you must provide your NIF and the procedure number that appears in the header of this document.

If within the stipulated period it does not make allegations, this initial agreement may be considered a resolution proposal, as established in article 64.2.f) of the LPACAP.

The sanctioning procedure will have a maximum duration of nine months, counting from the date of the start agreement or, where appropriate, of the draft agreement of beginning. Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

In accordance with the provisions of article 85 of the LPACAP, in the event of that the sanction to be imposed was a fine, it may recognize its responsibility within of the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in the present procedure. With the application of this reduction, the sanction would be

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set at €4,800 (Four Thousand Eight Hundred Euros), resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of the present procedure, carry out the voluntary payment of the proposed sanction, which which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at €4,800 (Four Thousand Eight Hundred Euros) and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one

It is appropriate to apply for the acknowledgment of responsibility, provided that this acknowledgment of responsibility is revealed within the period

granted to formulate arguments at the opening of the procedure. if it proceeded

apply both reductions, the amount of the penalty would be established at €3,600 (Three Sixteen hundred Euros).

In any case, the effectiveness of any of the two reductions mentioned

will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above, you must make it effective by entering the

account number ES00 0000 0000 0000 0000 0000 opened in the name of the Agency

Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the

concept the reference number of the procedure that appears in the heading

of this document and the reason for the reduction of the amount to which it avails itself. Likewise,

You must send proof of entry to the General Subdirectorate of Inspection for

continue with the procedure in accordance with the amount entered.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the

LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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: On December 31, 2019, the respondent has proceeded to pay the

SECOND

the sanction in the amount of 3,600 euros making use of the two planned reductions in the Startup Agreement transcribed above, which implies the recognition of the responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

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 as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the

article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common to Public Administrations (hereinafter, LPACAP), under the rubric "Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations.

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According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00397/2019, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to ZHANG BORDETA 2006, S.L..

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

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative before the Contentious-administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-Administrative Jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

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