

□ Procedure No.: PS/00080/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On October 26, 2020, it had entry in this Spanish Agency
of Data Protection a document presented by LABORATORIO OCTOGON, S.L.
(hereinafter, the claimant), through which he makes a claim against
PARRON RAMOS WORKSHOPS, S.L.U. with CIF B86245263 (hereinafter, the
claimed), for the installation of a video surveillance system installed in CALLE
***ADDRESS., ***LOCATION.1, with indications of possible non-compliance
of the provisions of the provisions of the data protection regulations of a character
staff.

The reasons that support the claim are that "The claimed company has
installed and controls the video surveillance of an area outside of it and that exceeds
Notably its facilities. The cameras visibly point to the outside of their
facilities and cover the surface of a patio where more businesses are housed
unrelated to said company, in this way images of customers are being obtained
who access said patio without approaching its facilities and who have no intention
to visit the claimed company. Similarly, employees, owners and partners
of the other businesses are also being recorded by the aforementioned
video surveillance. (...)"

Attach photographic report of the location of the cameras.

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), through the Notific@ system, being returned as expired.

For this reason, we proceed to reiterate it by post.

On February 11, 2021, a response was received from the respondent, in which states that it has a security service contracted through the company HELFEN SYSTEM, S.L. registered in the Registry of Security Companies of the General directorate of police.

Indicates that a security contract has been signed with the aforementioned security company. services dated December 18, 2017, which included installation and maintenance.

Subsequently, due to the expansion of elements, an Annex to the main contract was signed.

Provides:

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maintenance invoice corresponding to the current financial year issued by the company HELFEN SYSTEM, S.L.

Technical Report dated February 2, 2021 in which it reflects both the elements of which this system is currently composed, such as the technical characteristics, location and scope of the cameras.

The purposes are destined, solely and exclusively, to the preservation of the safety of people and goods, as well as its facilities,

as contemplated in precept 22 of the LOPDGDD, in section 1.

They state that the field of vision of the cameras is limited to the minimum essential and no images of public roads are captured, only of the interior of the facilities or the entrance to the workshop.

They also point out that the duty of information is scrupulously complied with contained in article 22.4 of the LOPDGDD, through the installation of different Information signs visible at all times for those interested.

In these informative posters, the minimum requirements of RGPD information, that is: Responsible for the Treatment, Purpose, Legal basis Treatment, Exercise of rights and Possibility of filing a claim before the supervisory authority.

Regarding the term of conservation of the images, they indicate that, as stated reflected in the System Maintenance Certificate, does not exceed in any case the maximum of one month established in article 22.3 of the LOPDGDD, unless they record the commission of acts that could threaten the integrity of persons, property or facilities, in which case they would be installed immediately, and in any case within the maximum of 72 hours, at the disposal of the competent authority.

Lastly, and apart from the information posters, the person in charge also has available to the interested parties the mandatory information according to the RGPD by means of a clause to that effect, providing a copy thereof.

THIRD: From the images provided it can be deduced that the installed System is consists of the following elements:

1 x 5 in 1 4 Channel HDCVI/HDTVI /AHD/ XVR Recorder Unit

6 units of Mini-Fixed Dome 4 in 1 StarLight Series ANTI-VANDAL

Location and scope:

- Workshop entrance: view the interior of the workshop.

- Warehouse: View the interior of the warehouse.
- Offices: view the interior of the offices.
- Workshop: View the interior of the workshop.
- Left Entrance: View the area to the left of the workshop entrance courtyard.
- Right Entrance: View the area to the right of the courtyard at the entrance to the workshop.

The two outer chambers (chambers identified with numbers 2 and 4 on the monitor) that are the ones denounced, effectively capture with amplitude the entrance to the

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workshops and a large part of the courtyard where other establishments and businesses are located, such as those of the claimant. They capture an excessive area of the patio.

FOURTH: The claim was admitted for processing by resolution of February 15 of 2021.

FIFTH: On March 24, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the GDPR.

SIXTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, it reiterates those previously presented.

However, he has contacted the installation security company that provides support, which has modified their orientation "(...) in such a way that only

This essential minimum of the public road is captured, according to the criteria of suitability and proportionality, which are necessary so that the cameras do not

lose their purpose and on the other hand the rights of third parties that could be caught accidentally.

Two photographs have been provided of what the exterior cameras capture, the object of the complaint. They show a part of the courtyard, apparently the entrance to their establishment, and several parked vehicles, potential customers. It is verified that has reduced the field of vision.

SEVENTH: On August 6, 2021, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigative actions, E/09280/2020, as well as the documents provided by the claimant.

EIGHTH: Attached as an annex is a list of documents in the process.

NINTH: On August 9, 2021, a resolution proposal was formulated, proposing to direct a warning to the person sought, without the need to adopt measures additional, since it provided two photographs of what the exterior cameras capture, having reduced the field of vision.

In this proposal, a period of 10 days was granted so that the person claimed could allege what he considers in his defense as well as present the documents and information that it considers pertinent, in accordance with article 89.2 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP).

TENTH: The respondent, in his brief of allegations to the proposed resolution, in synthesis, reiterates what has already been argued previously.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

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FACTS

FIRST: Existence of six video surveillance cameras installed on the STREET

ADDRESS.1 LOCALITY.1, being the two exterior ones the ones denounced and the object of this procedure:

- Left Entrance: View the area to the left of the workshop entrance courtyard.
- Right Entrance: View the area to the right of the courtyard at the entrance to the workshop.

SECOND: The person in charge of the video surveillance system is TALLERES PARRON RAMOS, S.L.U. with CIF B86245263.

THIRD: The respondent has provided two photographs of what the cameras capture exteriors. They show a part of the courtyard, apparently the entrance to their establishment, and several parked vehicles, potential customers. It is verified that has reduced the field of vision.

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 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this process.

II

The physical image of a person under article 4.1 of the RGPD is personal data and its protection, therefore, is the subject of said Regulation. Article 4.2 of the GDPR defines the concept of “treatment” of personal data.

Article 22 of the LOPDGDD establishes the specificities of data processing for video surveillance purposes, indicating the following:

"1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of people and property, as well as their installations.

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

However, it will be possible to capture the public road in an extension superior when necessary to guarantee the security of goods or strategic installations or infrastructures linked to transport, without In no case may it involve capturing images of the interior of a home private.

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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 persons, property or facilities. In that case, the images must be made available to the competent authority in within a maximum period of seventy-two hours from the date of 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

informative device a connection code or internet address to this

information.

In any case, the data controller must keep available to

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 the images and

sounds obtained through the use of cameras and video cameras by the Armed 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 the

traffic, will be governed by the legislation transposing Directive (EU) 2016/680,

when the treatment is for the purposes of prevention, investigation, detection or

prosecution of criminal offenses or execution of criminal sanctions, including

protection and prevention against threats to public safety. Outside

In these cases, said treatment will be governed by its specific legislation and

additionally by 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 law organic.”

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III

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, you 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 the people who are outside the private space where the security system is installed.
- video surveillance, since the processing of images in public places can only be carried out, unless there is government authorization, by the Forces and Corps of Security. Nor can spaces owned by third parties be captured or recorded without the consent of their owners, or, as the case may be, of the persons who are find.

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

it may be necessary to guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of security will not be able to 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, and 22 of the LOPDGDD, in the terms already indicated.

- 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.

In summary and to facilitate the consultation of interested parties, the Spanish Agency for Data Protection offers through its website [<https://www.aepd.es>] access to

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the legislation on the protection of personal data, including the RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”), 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 section “Guides and tools”).

It is also of interest, in the event of carrying out low-risk data processing, the facilitates free tool (in the “Guides and tools” section), which, through specific questions, allows to assess the situation of the person in charge with respect to the treatment of personal data that it carries out, and where appropriate, generate various documents, informative and contractual clauses, as well as an annex with measures guidelines considered minimum.

IV

In the present case, the claim is based on the presumed unlawfulness of the installation by part of the claim of a video surveillance system, consisting of six cameras installed in STREET ***ADDRESS.1***LOCATION.1, two of which could capture images of public areas disproportionately.

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

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among they have the power to issue a warning -article 58.2.b)-, the power to impose an administrative fine in accordance with article 83 of the RGPD - article 58.2 i)-, or the power to order the controller or processor that the treatment operations comply with the provisions of the RGPD, when

appropriate, in a certain way and within a specified period -article 58. 2

d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

provides in its article 58.2 b) the possibility of directing a warning, in relation to

with what is stated in Considering 148: "In the event of a minor infraction, or if the fine

likely to be imposed would constitute a disproportionate burden on a

natural person, instead of sanctioning by means of a fine, a

warning. However, special attention must be paid to the nature,

gravity and duration of the infringement, its intentional nature, the measures taken

to mitigate the damages and losses suffered, to the degree of responsibility or to any

pertinent previous infraction, to the way in which the control authority has had

knowledge of the infraction, compliance with measures ordered against the

responsible or in charge, adherence to codes of conduct and any other

aggravating or mitigating circumstance.

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When deciding to impose an administrative fine and its amount, in each case

individual will take into account the aggravating and mitigating factors indicated

in art. 83.2 of the RGPD, as well as any other that may be applicable to the

circumstances of the case.

The infractions are typified in article 83.5 of the RGPD:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9; [...]”

For the purposes of the limitation period for infractions, those indicated in paragraph above are considered very serious and prescribe after three years, in accordance with article 72.1 of the LOPDGDD, which establishes that:

“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:

[...] b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679.

c) Failure to comply with the requirements of Article 7 of the Regulation (EU) 2016/679 for the validity of consent [...]”

Article 22 section 2 of the LOPDGDD provides:

“Images of public roads may only be captured to the extent that it is essential for the purpose mentioned in the previous section.

However, it will be possible to capture public roads to the extent that it is essential to guarantee the security of strategic goods or installations or of infrastructures linked to transport, without in any case implying the

capturing images of the interior of a private home”.

Examined the file as a whole, although it is true that at the time of the start of this sanctioning procedure the cameras installed in the company of the claimed captured images outside their property, during the period of allegations, the respondent has stated that he has proceeded to relocate the cameras to his private space, providing two photographs of what the cameras capture. exterior cameras, subject of the complaint. They show a part of the courtyard,

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apparently the entrance to his establishment, and several parked vehicles, prospects. It is verified that it has reduced the field of vision.

SAW

In accordance with the foregoing, having examined the modifications of the installed system, the itself is considered adjusted to the right, capturing the cameras the least essential for its work of protecting the company.

Full collaboration with this body is taken into account when carrying out the precise corrections to avoid affecting the right of third parties, being the necessary ones to preserve the security of the property.

The parties are reminded of the importance of the rights at stake and must avoid instrumentalize institutions in matters beyond their competence, having to adjust the relationships between them to the minimum requirements of the good neighbor rules

Therefore, in accordance with the applicable legislation, once the criteria for

graduation of the sanctions whose existence has been proven, and taking into account account that the relocation of the cameras has occurred during the processing of the present procedure, it is maintained to direct a warning, since during a time the cameras overrecorded areas outside his property, although it was not require complementary measures to have been adopted.

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: SEND A WARNING to TALLERES PARRON RAMOS, S.L.U.

with CIF B86245263 for an infringement of article 5.1.c) of the RGPD, typified in the article 83.5 of the RGPD.

SECOND: NOTIFY this resolution to TALLERES PARRON RAMOS, S.L.U. with CIF B86245263.

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.

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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 month from

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

contentious-administrative appeal 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.

Sea Spain Marti

Director of the AEPD, P.O. the Deputy Director General for Data Inspection, Olga

Pérez Sanjuán, Resolution 4/10/2021

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