

□ Procedure No.: PS/00177/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On November 5, 2019, he entered this Agency

Spanish Data Protection, a document presented by A.A.A. (hereinafter the  
claimant), through which he makes a claim against B.B.B. with NIF \*\*\*NIF.1 (in  
hereinafter, the claimed), for the installation of a video surveillance system installed  
in the Bar "\*\*\*BAR.1", located in street \*\*\*DIRIMIENTO.1, \*\*\*LOCALIDAD.1,  
\*\*\* PROVINCE.1, regarding which there are indications of a possible breach of the  
provided in the data protection regulations.

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

"[...] the local bar "\*\*\*\*BAR.1" (belonging to the Community of owners of  
\*\*\*ADDRESS.1), of which the claimed/reported tenant is a tenant, has a  
video surveillance camera on the wall and that is focusing on the public road, so  
I required the tenant to remove it or focus on the premises and that the recorded  
delete, ignoring the request. After this incident I took photos of the  
camera to present this claim since I consider that they have violated  
my rights when recording myself on public roads. In addition, it does not have the relevant  
signaling (only red sticker without indicating who to claim) and according to  
information collected by a neighbor, has been installed by an unauthorized professional  
thereto. I understand that camera will not be legally registered or have the  
appropriate permissions. I provide the photos I took of the location of the camera, in the

that they will be able to verify in addition to the visit made by the inspector, where appropriate, to the local."

Attach photographic images from the camera located on a wall of the premises.

SECOND: Prior to admitting this claim for processing, the

Subdirector General for Data Inspection directed, on November 21, 2019,

a request for information to the respondent in which he was informed that the Agency

Data Protection had been aware of the existence of security cameras

video surveillance located at the address indicated in the first event that could be

violating the data protection regulations and in which it was requested that, in the

period of 1 month, the conformity of the aforementioned installation with the aforementioned

normative

This request was notified on December 5, 2019 and due to the lack of

response, a new request for information was sent on February 26,

2020, whose notification took place on March 6, 2020.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/5

There is no response from the respondent.

THIRD: The claim was admitted for processing by resolution of June 1

of 2020.

FOURTH: On January 8, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of articles 5.1.c) and 13 of the RGPD, typified in article 83.5

of the GDPR.

FIFTH: The attempt to notify the aforementioned start-up agreement at the domicile of the claimed, place where the transfer of the claim had been received, gave as result in non-receipt due to "unknown", so an announcement was published on the Single Edictal Board of the Official State Gazette on February 17, 2021.

The INE census database was consulted for the purpose of verifying that the domicile remains valid to guarantee the right of defense and contradiction of the claimed, the data obtained corroborate that the address has not changed.

For this reason, and in accordance with article 77 of the LPACAP, a procedure for test for a period of 30 days, and it is requested to the City Council of \*\*\*LOCALIDAD.1

your attentive collaboration so that, within said period, the Local Police can be transferred to the place of the facts and a report is issued stating the following:

- State of activity of the hotel establishment.
- Number of cameras that make up the video surveillance system and state of functioning.

Location areas of the different cameras in the premises.

-

- Orientation of the installed cameras and their capture area. Of allow the claimed, it is requested that they be observed and reported about the images displayed on the monitor.

- Any other aspect that is considered appropriate to review.

SIXTH: On May 6, 2021, this Agency received a response from the City Council of \*\*\*LOCALIDAD.1 providing the Report of the Service carried out on April 29, 2021.

"Personnel on the spot, he finds bar activity going on, viewing a single sensor camera at a higher angle with focus fixed to the door of the establishment and interior, as well as a sensor for expelling smoke that

reduces visibility in the passenger compartment in case of theft, not being observed on the facade or in the interior the existence of more cameras, without a monitor in the place where to visualize the images that he manifests are uploaded to the cloud of his mobile phone terminal if

Activate the anti-theft security camera, through the company's application

“Vesure”, exhibiting contract with security company Securitas Direct, (...)”

Also attached three photos.

-

Photo nº 1: facade of the bar “\*\*\*BAR.1”, without video surveillance cameras.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

3/5

-

-

Photo no. 2: poster announcing the video-monitored area at the access door with the data of the owner and establishment to exercise rights under the data protection regulations.

Photo nº3: Safety sensor for expelling smoke that reduces visibility in the establishment in case of robbery, with a single Securitas camera above connected to the Securitas Alarm Center, with the holder being able to capture images from your mobile terminal through the “Vesure” application of the cited company.

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: Installation of a camera that collects images of people who

located inside the private space of the Bar "\*\*\*\*BAR.1", located on Calle

\*\*\*ADDRESS.1, \*\*\*TOWN.1, \*\*\*PROVINCE.1.

SECOND: The person responsible for the device is B.B.B. with NIF \*\*\*NIF.1.

THIRD: The Local Police of the City Council of \*\*\*LOCALIDAD.1 has provided the

Report of the Service carried out on April 29, 2021 in which it is indicated that

there is a sensor camera at a higher angle with fixed focus on the door of the

establishment and interior, without monitor in the place where to visualize the images that

manifests are uploaded to the cloud of your mobile phone terminal if the camera is activated

anti-theft security.

Attach three photographs, one of which shows a sign announcing the area

video surveillance at the access door with the data of the owner and establishment for

exercise rights under data protection regulations.

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as 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

The defendant is charged with the commission of an infraction for violation of article

5.1.c) of the RGPD, which states that personal data will be "adequate, relevant and

limited to what is necessary in relation to the purposes for which they are processed

("data minimization").

This infringement is typified in article 83.5 of the RGPD, which considers as such:

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

4/5

“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;
- b) the rights of the interested parties according to articles 12 to 22; [...].”

III

The art. 77 section 5 of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (LPACAP, hereinafter), provides the following: “The documents formalized by the officials to whom the recognizes the 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 Security Forces and Bodies displaced to the scene of the events confirm the presence of the system.

IV

In the present case, it is appropriate to analyze the presumed illegality of the installation of a Bar “\*\*\*BAR.1”, located on the street video surveillance camera placed in the \*\*\*ADDRESS.1, \*\*\*TOWN.1, \*\*\*PROVINCE.1.

The proven facts show the existence of a camera installed in the

inside the premises that, according to the report provided by the Local Police of the locality, it does not capture public roads, it only collects images of people who located inside the private space of the establishment.

v

The principle of the right to the presumption of innocence, recognized as a right fundamental subjective in article 24 of the Spanish Constitution, prevents imposing an administrative sanction when proof of accrediting charge of the facts that motivate the imputation or of the intervention in the themselves of the alleged offender and applying the principle "in dubio pro reo" in case of doubt regarding a concrete and determined fact, which obliges in any case to resolve said doubt in the most favorable way for the interested party.

The aforementioned right to the presumption of innocence is also included in a expressed in article 53.2.b) of the LPACAP, which establishes that:

"two. In addition to the rights provided for in the previous section, in the case of administrative procedures of a punitive nature, the alleged responsible will have the following rights:

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/5

[...]b) To the presumption of non-existence of administrative responsibility while the contrary is proven."

In relation to this principle, the Constitutional Court in its Judgment 76/1990, of 26 of April, considers that the right to the presumption of innocence entails: "that the sanction is based on acts or means of proof of charge or incriminating the

reproached conduct; that the burden of proof corresponds to the person who accuses, without no one is obliged to prove their own innocence; and that any insufficiency in the result of the tests carried out, freely valued by the sanctioning body, must be translated into an acquittal pronouncement.”

SAW

Based on the foregoing, it cannot be concluded that the devices subject to the claim capture images outside the premises where it is installed, so that it does not it is possible to speak of infringing conduct within the scope of the regulatory framework of data protection, reason for which we proceed to the File of this process.

Therefore, in accordance with the applicable legislation, the Director of the Agency

Spanish Data Protection RESOLVES:

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

SECOND: NOTIFY this resolution to B.B.B. with NIF \*\*\*NIF.1.

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

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

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

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 Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

938-131120

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)