

968-150719

Procedure No.: PS/00279/2019

RESOLUTION R/00653/2019 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00279/2019, instructed by the Agency

Spanish Data Protection Agency to MEGASTAR, S.L., given the claim filed

by A.A.A., and based on the following,

BACKGROUND

FIRST: On October 30, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against MEGASTAR, S.L..

Notification of the initiation agreement and after analyzing the arguments presented, dated

On November 22, 2019, the proposed resolution was issued as follows:

transcribe:

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Procedure no.: PS/00279/2019

926-160419

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

to the following:

FACTS

FIRST: On May 7, 2019, it had entry in this Spanish Agency of

Data Protection a document presented by A.A.A. (*hereinafter referred to as the claimant),

through which he formulates a claim against the entity MEGASTAR, S.L. with NIF

B50563501 (hereinafter, the claimed one), for the installation of a

video surveillance installed in CALLE ANDADOR PAULA MONTAL FORNÉS 4,

ZARAGOZA, with indications of a possible breach of the provisions of the

content of art. 5.1 c) RGPD, by having the reported various cameras wrongly oriented obtaining disproportionate images.

The reasons that support the claim are the following: "What formulates

Complaint against the entity Megastar S.L because there is no information panel and they take their cameras a very broad view of the public area and/or land that does not correspond to the aforementioned company (...)"—folio nº 1--.

Provide documentary evidence (Doc. No. 1) that proves the installation of a camera on the facade of the property, without an informative sign(s) being seen on it.

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 www.aepd.es

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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.

THIRD: The claim was admitted for processing by resolution of July 12 of 2019.

FOURTH: On October 30, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in the Article 83.5 of the RGPD.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written pleadings in which, in summary, it stated the following.

"The processing of personal data, regardless of the basis of the same, entails the need to carry out an evaluation of proportionality to check if the treatment is necessary to achieve said legitimate interest and if the measures adopted are adequate to ensure that interference in the rights to privacy and secrecy is minimal.

The principle of proportionality, referenced in the RGPD in section 1.d of the article 5, -and to whose content the norm also refers as "minimization of data"-, was already part of our legal system previously, but this previous existence should not lead us to disdain the importance of this principle that it only limits the processing of data not only in the sense of adapting it to certain purposes but also imposes the need to adopt technical measures and organizational measures aimed at minimizing the processing of personal data.

Today's display technology is based on high-quality standards.

definition. The aspect ratio used in almost all of the televisions, video surveillance cameras, mobile phones and a long etc. it is 16:9.

This means that the aspect ratio forces the display area of a screen will always be greater in its width than in its length, which is called panoramic vision.

Cameras D2 and D3 are recording the same facade facing each other, with a longitudinal scope that focuses to the end of the perimeter of the premises. The transversal recording of these cameras focuses more than 30% of the wall and is the minimum part necessary for the camera lens to focus accurately effective and have a sharp image. It is a pedestrian area with hardly any human traffic.

The installation of video surveillance of the facilities of MEGASTAR S.L.

respects the principle of proportionality, only images of public roads are recorded and the minimum necessary private areas that current technology allows, adjusting the focus of the lenses in the minimum aspect ratio possible”.

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SIXTH: Of the actions carried out, the following have been accredited proven facts:

First. On 05/07/19, a claim was received from the complainant through from which he transfers as the main fact the following:

“Which makes a complaint against the entity Megastar S.L because there is no panel informative and their cameras take a very wide view of the public area and/or land that does not correspond to the aforementioned company (...)”—folio nº 1--.

Provides documentary evidence (Doc. No. 1) that proves the installation of a camera in the facade of the property, without an informative sign(s) being seen on it.

Second. The Megastar entity is identified as the main responsible entity, that he acknowledges having a video surveillance camera system installed.

Provide documentary evidence that proves the presence of an information poster, if either it does not have the date and time of capture, so it cannot be determine whether or not the cartel existed prior to notice of the Commencement Agreement.

-Attached plan where the cameras are installed. (Annex I).

Third. Cameras installed outside of MEGASTAR S.L. Are the located on the plane with the numbers D2, D3, D5, D6, D7, D8 and D9.

Camera D2: This camera has a fixed image and focuses on the façade and the windows of the local.

Analyzed the image provided by it, captures the entire sidewalk and a path parallel, even observing a bicycle leaning against a nearby tree.

Camera D3: This camera has a fixed image and focuses on the facade, windows and the premises entrance.

Analyzed the image provided by it, captures the entire sidewalk and a path parallel,

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Camera D5: This camera has a fixed image and focuses on the facade and shutters of the premises.

Once the image provided has been analyzed, the capture of the image of the part located in front of the closing shutter of the establishment.

Camera D7: This camera has a fixed image and focuses on the facade and shutters of the premises.

Once the image provided has been analyzed, the capture of the image of the part located in front of the closing shutter of the establishment.

Camera D8: This camera has a fixed image and focuses on the facade and windows of the premises.

Once the image provided has been analyzed, the capture of the image by part of the playground of the nearby building, beyond the part proportional to the windows of the denounced entity that they are intended to protect.

Camera D9: This camera has a fixed image and focuses on the facade and windows of the premises.

Analyzed the provided image allows to observe the entire nearby patio, affecting the privacy of users of the facilities without just cause.

SEVENTH: Attached as an Annex is a list of documents in the procedure, having permanent access to the administrative file of estimating it necessary.

FOUNDATIONS OF LAW

Yo

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.

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II

In the present case, we proceed to examine the claim dated 05/07/19 by means of which the following is transferred as the main fact:

“Which makes a complaint against the entity Megastar S.L because there is no panel informative and their cameras take a very wide view of the public area and/or land that does not correspond to the aforementioned company (...)”—folio nº 1--.

Private companies can install video surveillance cameras, although they are responsible that they focus (limit) to their private sphere (eg doors of access or closure of the same), not being able to obtain disproportionate images of private spaces of third parties.

The facts described above suppose a violation 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");

The entity denounced-Megastar—makes allegations on 07/03/19 acknowledging being responsible for the installation of the video camera system surveillance.

After examining the documentary evidence provided, it is confirmed that disproportion in the images obtained, which exceed the perimeter frame of the entity.

The D2 camera allows you to obtain images of the nearby park, as well as the the entire sidewalk where people usually walk, thus affecting the right of third parties.

The D3 camera allows you to obtain images of the nearby park, as well as the entire sidewalk where you usually walk.

The D8 camera allows you to obtain partial images of a field of play adjacent, being disproportionate to the intended purpose, which is the protection of the installations.

The D9 camera obtains images of a nearby courtyard in its entirety, looking beyond the facade, being misoriented as to the purpose pretended.

All of the above, allows verifying that the installed system does not conform to the current legality, by having several poorly oriented cameras, which obtain images of public and/or private space of a third party without just cause.

Regarding the notion of "public space" the legislation does not define it expressly in any article, for which the Spanish Agency for the Protection of

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Data in its resolution R/02340/2012 goes to the definition of the Royal Academy to

clear it up:

“That public space should be understood, a concept that seems to encompass the public thoroughfare, is not defined in the standard, but in the Dictionary of the Royal Academy in web version, defines a public road as: "Street, square, road or other place where transits or circulates the public", without mentioning any ownership, that is to say outside the legal definition. And it must be insisted that private ownership of open land does not justify per se the recording of images in the event that It is a "public place", as indicated by the repeated Law 4 / 1997".

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 in 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

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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.

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

In accordance with the evidence available in this time of the sanctioning procedure, it is considered that the facts exposed violate the provisions of art. 5.1 c) RGPD, by providing the reported several cameras that are oriented towards the public and/or private area of a third party in a disproportionate without just cause.

The entity identified as the main person responsible for the events is Megastar S.L, which has proceeded to install the system for security reasons of the company and its belongings.

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

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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;

Security cameras installed in private spaces will not be able to obtain images of public spaces, the security function of public spaces corresponds exclusively to the State Security Forces and Bodies.

In the present case, when motivating the initial sanction, the

Next:

-the nature of the infraction, since it is affecting the rights of third parties have been intimidated by them, obtaining images of public roads and exclusive of third parties (art. 83.2 a) RGPD).

-The intentionality or negligence of the conduct, by widely capturing the public and areas of the adjacent property, without having adopted any measure to mask the images (art. 83.2 b) RGPD).

Therefore, based on the foregoing, taking into account, however, the initial collaboration of the accused with this body, as well as the lack of previous infractions for the same facts, an economic sanction is proposed in the lowest scale of this type of sanctions, encrypting it in the amount of €2,000 (Two thousand euros).

The foregoing without prejudice to complying with the requirements of this Agency and take the necessary measures so that the cameras adjust their angle of vision to the perimeter frame of the company exclusively. As a guide, it is not possible to capture the adjacent courtyard and the viewing angle of the camera(s) will be oriented preferentially to your private area.

Likewise, it is recalled that you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the sanction proposal, which will mean a reduction of 20% of its amount. with the app of this reduction, the sanction would be established at €1600 (One thousand six hundred Euros), s euros and its payment will imply the termination of the procedure.

Therefore, according to the above,

In view of the foregoing, the following is issued

MOTION FOR A RESOLUTION

That the Director of the Spanish Data Protection Agency sanction the

entity MEGASTAR, S.L., with NIF B50563501, for a violation of Article 5.1.c)

of the RGPD, typified in Article 83.5 of the RGPD, a fine of €2,000.00 (TWO THOUSAND euros).

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Likewise, in accordance with the provisions of article 85.2 of the LPACAP,

You are informed that you may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which

will mean a reduction of 20% of the amount of the same. With the application of this

reduction, the sanction would be established at 1,600.00 euros and its payment will imply the

termination of the procedure. The effectiveness of this reduction will be conditioned to the

Withdrawal or waiver of any administrative action or recourse against the

sanction.

In case you chose to proceed with the voluntary payment of the amount

specified above, in accordance with the provisions of article 85.2 cited,

You must make it effective by depositing it in the restricted account number ES00 0000

0000 0000 0000 0000 opened in the name of the Spanish Agency for the Protection of

Data in Banco CAIXABANK, S.A., indicating in the concept the number of

reference of the procedure that appears in the heading of this document and the

cause, by voluntary payment, of reduction of the amount of the sanction. Also, you must

send proof of entry to the General Subdirectorate of Inspection for

proceed to close the file.

By virtue thereof, the foregoing is notified, and the

procedure so that within a period of TEN DAYS you can allege whatever you consider in his defense and present the documents and information that he considers pertinent, in accordance with article 89.2 in relation to art. 73.1 of the LPACAP).

Alfredo Asensi Diez

INSPECTOR/INSTRUCTOR

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: On November 30, 2019, MEGASTAR, S.L. has proceeded to

SECOND

payment of the sanction in the amount of 1600 euros making use of the planned reduction in the motion for a resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the resolution proposal.

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 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

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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 the Procedure

Common Administrative of Public Administrations (hereinafter LPACAP), under the heading "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."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00279/2019, of

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

SECOND: NOTIFY this resolution to MEGASTAR, S.L.

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 process as

prescribed by art. 114.1.c) of Law 39/2015, of October 1, on Procedure

Common Administrative of Public Administrations, interested parties may

file a contentious-administrative appeal before the Contentious Chamber

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

in section 5 of the fourth additional provision of Law 29/1998, of July 13,

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

count from the day following the notification of this act, as provided in the

Article 46.1 of the aforementioned Law.

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Sea Spain Marti

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