

Procedure No.: PS/00360/2018

938-0319

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before BAR

MESÓN RAÏM (A.A.A.), by virtue of a claim filed by D. G. DE LA

GUARDIA CIVIL - POSTO DE ALCARRAS (hereinafter, the claimant) and based on

the following:

FACTS

FIRST: Dated 06/19/2018 you have entry in this Agency written GUARDIA

CIVIL -PUESTO DE ALCARRAS-- (hereinafter the claimant) communicating possible

infringement of the RGPD, motivated by the processing of data carried out through

cameras of a video surveillance system owned by BAR MESÓN RAÏM (A.A.A.).

Specifically, it denounces that the establishment does not have the mandatory

informative posters, placed in a visible area, so that you can have

knowledge of the person responsible for the file.

Agents displaced to the scene inform the party

denounced, drawing up the corresponding inspection report (doc. nº 1).

SECOND: On 07/11/2018, this body required the defendant to

that proves in Law that the installed system complies with current legislation,

being able to provide all the documentation that it considers necessary, without

no response has been made on your part.

THIRD: On 09/10/2018 it was requested again by this body to

to provide all the documentation it deems necessary to prove

that the system was adjusted to the current legality, without any answer having been

made about it.

FOURTH: On 11/22/2018, the Agreement to Start the procedure is notified sanction against the reported entity for not responding to the requirements of this organism repeatedly.

The exposed facts could suppose the commission, on the part of the defendant of an infringement of article 12 of the RGPD, in the terms referred to both in the aforementioned article, as in articles 13 and 14 of said rule, and the respondent must give due compliance with the provisions of article 3 of Instruction 1/2006, of 8 November, from the Spanish Data Protection Agency.

FIFTH: On 12/07/18, a written statement was received from the entity denounced, noting that on 08/06/18 a certified letter was sent in which provided justification and documentation as the measures had been adopted necessary requested by you.

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“That on 08/06/18 a certified letter was sent in which it was provided justification and documentation as the necessary measures had been adopted requested by you.

That is why I enclose the following documentation:

-A photograph of the exterior image of the video-surveillance area sign located in the main entrance of the establishment.

-Three images of the interior of the establishment in which the location of the video-surveillance camera and its corresponding sign (...).”

SIXTH: On 12/11/18, a resolution proposal was formulated, proposing Warning to the denounced entity, given that when proceeding to correct the cartel

informative, the address of the person in charge who placed on the poster was that of this body and not that of the person responsible for the "processing of personal data". staff".

SEVENTH: On 01/04/19 a letter of allegations is received from the entity denounced—Bar Mesón Raïm—stating that it has proceeded to modify the sign informative in the terms exposed, providing photographic material that accredits the modifications made to the video-surveillance system.

EIGHTH: Of the actions carried out in this proceeding, they have been accredited the following proven facts:

First. On 06/29/18 a letter was received from the General Directorate of the Civil Guard (Interior Ministry) transferring as the main fact the "absence of informative poster" in the denounced establishment.

Second. It is accredited as the main responsible A.A.A. with NIE ***DNI.1.

Third. On the denounced part, a poster has been placed in a visible area informative, although it is indicated in an erroneous way that the person in charge is the Agency Spanish Data Protection.

Fourth. It is certified that the person in charge of the establishment has informative form available to the clients of the establishment.

Fifth. The cameras are installed in the dining area although it does not provide screen impression of what is monitored with them.

Sixth: The information poster has been corrected indicating that Bar is responsible Mesón Raïm (A.A.A.).

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FOUNDATIONS OF LAW

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The Director of the Spanish Agency for the Protection of Data, in accordance with the provisions of section 2 of article 56 in relation to the section 1 f) of article 57, both of Regulation (EU) 2016/679 of the Parliament European and Council of April 27, 2016 on the protection of people regarding the processing of personal data and the free circulation of these data (hereinafter GDPR); and in article 47 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights digital (hereinafter LOPDGDD)

II

In the present case, we proceed to examine the Complaint sent by the Forces and State Security Corps on 06/29/18 transferring as main fact the “absence of an information poster” in the reported establishment.

Article 77 section 5 of Law 39/2015 (October 1) LPAC provides the

Next:

“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 accused party does not deny the facts and proceeds to correct the lack of information poster.

It should be remembered that the informative poster must inform about the responsible for the file, which is not this body, but the person who has placed the video surveillance camera.

In such a way, that in the informative poster it should be put as an example

A.A.A., you can exercise your rights at Bar Mesón Raïm C/Mosén Reig, nº 17

Lleida.

It is the owner of the establishment or person in charge designated for this purpose, who must control the recordings made, adopting the necessary measures.

All these indicated measures must be able to accredit in a way simple in the event of a new inspection by the Police or the Inspection Service of this organization (eg having a folder with the forms, the posters in accordance with the law, controlling the images obtained, etc).

Article 3. Information of Instruction 1/2006 (AEPD) provides the following:

III

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Those responsible who have video surveillance systems must comply with with the duty of information provided for in article 5 of Organic Law 15/1999, of December 13th. To this end they must:

- a) Place, in video-monitored areas, at least one informative badge located in a sufficiently visible place, both in open and closed spaces and
- b) Have at the disposal of the interested parties printed in which it is detailed the information provided for in article 5.1 of Organic Law 15/1999.

The content and design of the informative badge will comply with the provisions of the Annex to this Instruction”.

With the entry into force of LO 3/2018 (December 5) LOPDGDD, article 22

Section 4 provides the following:

“The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing a device informative 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 articles 15 to 22 of Regulation (EU) 2016/679. You can also include 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 (...).

IV

The infraction imputed to the accused is accredited given that in the cartel contributed does not identify the effective person in charge before whom to exercise the rights listed in current regulations.

The exposed facts suppose an affectation to the content of article 12 RGD, by not adopting the necessary measures to facilitate the exercise of rights to any interested party (a) who enters your establishment, being typified as very serious violation of art. 83.5 letter b) RGD when affecting the rights of the themselves, who do not know before whom they can exercise their rights.

The Spanish Agency for Data Protection is a control authority not responsible for the images obtained from the Independent, reported establishment.

The person responsible for the images of the denounced establishment is the establishment that must designate a person in charge (natural/legal person) who take charge of the control of the cameras and what is recorded with them.

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Article 58 section 2 of the RGD 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 warning when the processing operations have violated the provisions in this Regulation (...).

In this case, the technical complexity of the regulations is taken into account.

in force, having shown the accused (a) a willingness to collaborate with this agency, proceeding to the placement of information posters, although these do not were correct for the reasons stated, as well as the absence of spurious purposes in system installation.

Remember that video surveillance cameras cannot obtain images of reserved spaces or that may disturb the intimacy of local customers, so that if the purpose is the security of the establishment, the camera (s) must be placed towards the main door of the premises, windows or main entrances and inside the establishment cannot directly capture the tables of the premises.

In the event of any type of "altercation" that is subject to recording by the installed camera(s) must be brought to the attention of the Forces and State Security Bodies (vgr. National Police, Civil Guard, etc.) that will guide you on how to proceed in these cases with the recording obtained.

The installed system must meet the criteria widely set out by this body, and the documentation must be presented correctly to effects of its analysis by this body.

SAW

Based on the foregoing, it can be concluded that the reported establishment does not had an informative poster indicating the effective person in charge of the treatment of data, thereby breaching the duty to inform (art. 12 RGPD), although for the reason of the instruction of this procedure has proceeded to adopt the measures

necessary to correct such a situation.

Based on the foregoing, it is not appropriate to require any additional measure, since has placed the corresponding informative device in a visible area, proceeding the Warning for the offense previously committed; although it is remembered complained party who must ensure that his establishment complies with all the requirements of current regulations on data protection.

Consequently, the following have been taken into account as aggravating factors:

the Director of the Spanish Data Protection Agency RESOLVES:

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FIRST: PROCEED to decree the WARN of this procedure,

when the irregularity of the denounced cartel is proven, since it lacks the express indication of the person in charge before whom to exercise the recognized rights (art. 12 RGPD) without requiring any additional measures by having adopted the measures necessary so that the installed video-surveillance system complies with the regulations in force.

SECOND: NOTIFY this resolution to the entity BAR MESÓN RAÏM

(A.A.A.) and report in accordance with art. 77.2 of the RGPD to the reporting entity-- D. G.

OF THE CIVIL GUARD -PUESTO DE ALCARRAS--, of the result of the claim.

In accordance with the provisions of article 50 of the LOPDPGDD, 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 LOPDPGDD, 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 month 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.

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Director of the Spanish Data Protection Agency