

936-031219

□ Procedure No.: PS/00035/2020

RESOLUTION R/00331/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00035/2020, instructed by the Agency

Spanish Data Protection Agency to A.A.A. (COFFEE RESTAURANT B.B.B.), view the

complaint filed by the CITY COUNCIL OF ANTEQUERA, and based on the

following,

BACKGROUND

FIRST: On June 8, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against A.A.A. (COFFEE

RESTAURANT B.B.B.) (hereinafter, the claimed party), by means of the Agreement

transcribe:

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Procedure No.: PS/00035/2020

935-200320

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: ANTEQUERA CITY COUNCIL (*hereinafter, the claimant) with

dated January 21, 2020 filed a claim with the Spanish Agency for

Data Protection. The claim is directed against A.A.A. (RESTAURANT CAFE

B.B.B.) with NIF ***NIF.1 (hereinafter, the claimed one).

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The reasons on which the claim is based are "installation of a camera on the facade of establishment oriented towards public space, ignoring the recommendations of the Local Police" (folio nº 1).

"That on 12/05/18 the accused is informed that he cannot have the device installed in the form it has (...)"

"Throughout 2019, the owner of the facility has been reiterated on several occasions irregularity of the same, ignoring the warnings of the Agents of the Local Police" (folio No. 1).

Together with the claim, it provides a photographic report (Annex I) that proves the presence of the device towards public space, without just cause, lacking a poster informative indicating that it is a video-monitored area.

SECOND: In view of the facts denounced in the claim and the documents data provided by the claimant, the Subdirector General for Data Inspection pro-yielded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the powers of investigation granted to the control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD), and in accordance with the provisions ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed that the data controller is the claimed party.

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FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

In the present case, the claim dated 01/21/20 is examined by me- from which the "video-surveillance camera installation" is transferred to this Agency facing public space in the coffee establishment B.B.B.

The art. 5.1 c) RGPD provides the following: The personal data will be: "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed fulfilled comply with current legislation, proving that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative sign. tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each personal character.

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Article 22 section 4 of the LOPDGDD (LO 3/2018, December 5) provides:

“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 site a connection code or internet address to this information.

In any case, the data controller must keep available

of those affected the information referred to in the aforementioned regulation”

In any case, the cameras should preferably be oriented towards the space

particular, avoiding intimidating neighboring neighbors with this type of device, as well

how to control their transit areas without just cause.

With this type of device it is not possible to obtain image(s) of public space either.

co, as this is the exclusive competence of the State Security Forces and Bodies

ted.

It should be remembered that even in the case of a "simulated" camera, the same

should preferably be oriented towards private space, since it is considered

that this type of device can affect the privacy of third parties, that they are inti-

measured by it in the belief of being the subject of permanent recording.

III

In accordance with the evidence available at the present time of

agreement to initiate the sanctioning procedure, and without prejudice to what results from the

instruction, it is considered that the requested person has a video-surveillance system

that could be poorly oriented towards public space.

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Known facts could constitute an infringement, attributable to the claimant.

mado, for violation of article 5.1 c) RGPD.

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

will be sanctioned, in accordance with section 2, with administrative fines of 20

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

to a maximum of 4% of the total global annual turnover of the financial year

above, 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;

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the

following criteria established by article 83.2 of the RGPD:

-the nature of the behavior described, by having a camera obtaining

images of public space, furtively with reasons not clarified to the day of the

date (art. 83.2 a) RGPD).

- the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

measure (art. 83.2h) RGPD).

As stated in the complaint transferred to this body “throughout 2019

the irregularity of the

himself, ignoring the warnings" (folio nº 1).

Based on the foregoing, given the seriousness of the facts reported by the FFCC--State Security Forces and Bodies--, it is considered correct to propose an initial fine of €1,500 (one thousand five hundred Euros), located on the lowest scale for this type of behavior, pending the allegations of the denounced party.

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The denounced party must prove the legality of the system, providing im-screen pressure (vgr. printing date and time) that proves what is captured in your case, as well as all the necessary documentation to verify that it is conforms to what is required in the regulations in force or, failing that, has proceeded to withdraw immediately remove the camera from its current location.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: INITIATE PUNISHMENT PROCEDURE against the accused Mr. A.A.A.

(CAFÉ RESTAURANTE B.B.B.), with NIF ***NIF.1, for the alleged violation of art.

5.1 c) RGPD, by having a space-oriented video surveillance device

public without just cause, offense typified in art. 83.5 a) RGPD, being

punishable in accordance with art. 58.2 GDPR.

SECOND: APPOINT C.C.C. and, as secretary, to D.D.D., indi-

stating that any of them may be challenged, where appropriate, in accordance with the provisions

ed in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime

of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim

information filed by the claimant and his documentation, the documents obtained and

generated by the Subdirector General for Data Inspection during the investigation phase.

investigations, all of them part of the administrative file.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1-

tubre, of the Common Administrative Procedure of the Public Administrations, the

sanction that could correspond would be €1,500 (one thousand five hundred Euros), without prejudice

cio of what results from the instruction.

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FIFTH: NOTIFY this agreement to the defendant Mr. A.A.A. (COFFEE

RESTAURANT B.B.B.), with NIF ***NIF.1, granting a hearing period of ten

working days to formulate the allegations and present the evidence that it considers

convenient. In your statement of allegations, you must provide your NIF and the number of the

consent that appears at the top of this document.

If within the stipulated period it does not make allegations to this initial agreement, the

same may be considered a resolution proposal, as established in article

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Co-

of the Public Administrations (hereinafter, LPACAP).

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 established at €1,200, resolving the procedure with the imposition of this sanction. tion.

Similarly, you may, at any time prior to the resolution of the claim, present procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 1200 euros and its payment will imply the termination of the pro-transfer.

The reduction for the voluntary payment of the sanction is cumulative to the one that corresponds to apply for the acknowledgment of responsibility, provided that this acknowledgment acknowledgment of responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of amount referred to in the preceding paragraph may be made at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the sanction would be established at €900 (nine 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.

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In case you chose to proceed to the voluntary payment of any of the amounts

indicated above €1,200 or €900, you must make it effective by paying
in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Agencia Es-
Data Protection Office at the banking entity CAIXABANK, S.A., indicating
in the concept the reference number of the procedure that appears in the heading
processing of this document and the reason for the reduction of the amount to which it is accepted.
Likewise, you must send proof of payment to the General Subdirectorate of
Inspection to continue with the procedure in accordance with the quantity entered.
sada.

The procedure will have a maximum duration of nine months from the
the date of the start-up agreement or, where applicable, of the draft start-up agreement. Trans-
After this period, it will expire and, consequently, the update file will
tions; in accordance with the provisions of article 64 of the LOPDGDD.
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 July 1, 2020, the claimant has proceeded to pay the

SECOND

penalty in the amount of 900 euros making use of the two reductions provided for in
the Start 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.

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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 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.

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00035/2020, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to A.A.A. (RESTAURANT CAFE B.B.B.).

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 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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