

□ Procedure No.: PS/00084/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated December 11, 2019, entered this Agency

Spanish Data Protection, a document presented by A.A.A. (hereinafter the

claimant), through which he makes a claim against the trade name

BAR CARIBOU for the installation of a video surveillance system in the premises located in

street ***ADDRESS.1, there are indications of a possible breach of the

provided in the personal data protection regulations.

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

“This establishment (Bar Caribou) has placed several video surveillance cameras

lancia outside filming a street and a square where minors play.

There are no signs inside or outside the establishment informing

of being recorded or where we can go to have our files removed.

data. [...]»

Attached photographic report of the two facades where they are located.

give the video surveillance 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), making the notification on the day

5/2/2020.

On 3/3/2020, this Agency received a written response from the
claimed with the following content:

«Identification of the person in charge:

Castellana of recreational machines S.L.

C/ ***ADDRESS.1

B47732771

BBB ***TELEPHONE 1

Copy of the camera system maintenance service contract

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camera system

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2 exterior cameras protecting the 2 facades of the premises

5 interiors protecting the installation inside the premises

Recording and storage system on hard disk with maximum term

30 days

Photograph of the monitor of the images captured by the cameras

Photographs of facades and access to the premises with the existence of the posters
of video-surveillance zone.»

Attaches video surveillance and photography system maintenance contract

enlarged information poster.

THIRD: The claim was admitted for processing by resolution of March 3

of 2020.

FOURTH: Based on the previous actions, it is considered accredited that the

Responsible for data processing is the company CASTELLANA DE

RECREATIONAL MACHINES S.L. with NIF B47732771 (hereinafter the claimed).

FIFTH: On June 9, 2020, 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: Formal notification of the initiation agreement, the respondent has not submitted

brief of allegations, for which what is stated in article 64 of the

Law 39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations, which in section f) establishes that in the event of

make allegations within the stipulated period on the content of the initiation agreement,

this may be considered a resolution proposal when it contains a

precise pronouncement about the imputed responsibility, for which reason

to issue resolution.

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

of Data in this procedure the following are considered proven facts,

FACTS

FIRST: The defendant has installed a video surveillance system in the BAR

CARIBOU, located at ***ADDRESS.1 composed of 7 chambers (5 interior and 2

exteriors) whose installation and maintenance has been contracted with ADVISER

SECURITY SYSTEMS S.L.

SECOND: In the photographs provided by the respondent in the transfer of the

claim it is observed that the external camera located on the lateral facade captures the

the entire width of the sidewalk and part of the roadway, including vehicles

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parked in regulated parking spaces. Also, in the photo

corresponding to the camera of the facade of the street *** ADDRESS.1, it is observed

an extensive capture of the pedestrian zone in which it is located.

SECOND: The facility is equipped with an informative poster adapted to the regulations.

THIRD: The respondent has not presented arguments.

FOUNDATIONS OF LAW

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

control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the

Director of the Spanish Data Protection Agency is competent to resolve

this procedure.

II

The defendant is imputed the commission of an infraction for violation of the

article 5.1.c) of the RGPD, regarding the principles of treatment, which provides that the

personal data will be “adequate, relevant and limited to what is necessary in relation to

for the purposes for which they are processed (“data minimization”)”. This article

enshrines the principle of data minimization in data processing

personal. It assumes that said treatment is adjusted and proportional to the purpose to be

which is addressed, and the processing of excessive data must be restricted or

proceed to delete these.

The violation of this article is typified as an infraction in article 83.5 of the

RGPD, which considers as such:

"Infringements of the following provisions shall be sanctioned, in accordance

with paragraph 2, with administrative fines of EUR 20,000,000 as

maximum or, in the case of a company, an amount equivalent to 4%

as a maximum of the overall annual total turnover of the financial year

above, opting for the highest amount:

a)

basic principles for treatment, including conditions

for consent under articles 5, 6, 7 and 9;» [...]

However, article 58.2.b) of the same legal text provides for the possibility of

punish with a warning, in relation to what is stated in Considering 148:

"In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than

sanction by means of a fine, a warning may be imposed. must however

Particular attention should be paid to the nature, severity and duration of the

infringement, its intentional nature, the measures taken to alleviate the

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damages suffered, the degree of responsibility or any infringement

previous pertinent, to the way in which the supervisory 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.

For the purposes of the limitation period for infractions, the infraction indicated

in the previous paragraph is considered very serious and prescribes after three years, in accordance with

Article 72.1 of the LOPDGDD, which establishes that:

"According to the provisions of article 83.5 of Regulation (EU) 2016/679

are considered very serious and the infractions that

entail a substantial violation of the articles mentioned therein and,

in particular, the following:

a) The processing of personal data violating the principles and

guarantees established in article 5 of Regulation (EU) 2016/679».

[...]

III

In the present case, it is appropriate to analyze the presumed illegality of the

video surveillance installed by the defendant in BAR CARIBOU, two of whose

cameras are oriented towards the outside: one on the facade of the access door to the

local and another on the side facade.

The facts proven in this sanctioning procedure show

manifest that the two cameras installed on the facades capture in a way

disproportionate public road. Regarding this issue, article 22 of the

LOPDGDD provides that, for reasons of security of goods or persons, they may

capture images of public thoroughfares "to the extent that it is essential", in

correspondence with the principle of data minimization established in the article

5.1.c) of the GDPR.

Taking into account the foregoing, in the event that it is a question of guaranteeing the

security of a good in its access or perimeter, the area of public thoroughfare captured will have

to be reduced to a minimum. In the case that is the subject of this proceeding, this means

that, to guarantee the security of the establishment, the images may reach the minimum portion of sidewalk adjacent to both facades, but it is not considered proportionate to capture the entire width of the sidewalk or parked vehicles (lateral facade) nor an extensive part of the pedestrian zone in which it is located nailed the facade of the access door to the premises, since otherwise the pedestrians and motorists would see their right to protection of the physical image.

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Expanding on this issue, it is reported that the ability to capture images on public roads is attributed, in general, to the Police Forces and Corps Security, in accordance with the provisions of Organic Law 4/1997, which regulates the use of video cameras by the Security Forces and Bodies in public places and their implementing regulations.

In the present case, when deciding the appropriate sanction to impose,

In particular, the following elements have been taken into account:

IV

That according to the information contained in the latest accounts

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presented (those corresponding to the 2017 financial year), these are a microenterprise for the purposes of Recommendation 2003/361/EC of the Commission, of May 6, 2003 on the definition of micro-enterprises, small and medium businesses.

That its main activity is not linked to the treatment of

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personal information.

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That there is no record of recidivism.

☐ That he has shown a cooperative attitude with this Agency by having answered to the transfer of the claim and to the fact that one of the infractions that were reported in this was corrected.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE CASTELLANA DE MÁQUINAS RECREATIVAS, S.L., with NIF B47732771, for an infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, a sanction of WARNING.

Likewise, within ONE MONTH from the notification of this act,

You must prove the following:

☐ Prove that you proceeded to remove the exterior cameras from your current locations, or to its reorientation by reducing the angle of catchment.

SECOND: NOTIFY this resolution to CASTELLANA DE MÁQUINAS RECREATIVAS, S.L. and REPORT the outcome of the proceedings to A.A.A.

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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 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 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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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