

□ Procedure No.: PS/00311/2019

938-300320

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: CALLE CALDEREROS DAMNIFIED RESIDENTS ASSOCIATION,  
CONCEPCION Y ADY (\*hereinafter, the claimant) dated March 8, 2019

filed a claim with the Spanish Data Protection Agency.

The claim is directed against GRUPO CAROLIZAN with NIF B02614527 (in  
later, the claimed one). The grounds on which the claim is based are the presence of  
video-surveillance cameras in the arcade area of the reported establishment,  
affecting the right of third parties without just cause.

Along with the claim, provide documentary evidence that proves the installation of  
cameras subject to complaint (Annex I).

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-  
vided 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.

THIRD: On 01/04/19, the claim is TRANSFERRED to the entity

denounced, in order to prove the legality of the denounced facts.

After the analysis of the allegations, the following extremes are proven:

- That the establishment has an informative poster in a visible area indicating the responsible before which to exercise their rights.
- Does not prove to have an information form in the establishment to disposition of the users of the same.
- Does not provide screen printing (date and time) of the camera (s) installed in the outside of the establishment.

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FOURTH: On December 18, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the defendant, with

regard to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-

Common Administrative Procedure of Public Administrations (hereinafter, LPA-

CAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article

83.5 of the GDPR.

FIFTH: Once the aforementioned initiation agreement has been notified, the respondent has not

any statement in this regard in relation to the facts subject to transfer.

SIXTH: On 02/17/20, a "Resolution proposal" was issued, agreeing

propose a sanction encrypted in the amount of 3,000 euros for the installation of a

camera system oriented disproportionately towards public space.

SEVENTH: Attached as an annex is a list of documents in the procedure, remembering full accessibility to the administrative file.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

#### PROVEN FACTS

First. This case brings cause of the claim dated 03/08/19 through from which the main fact is transferred to this organism:

“presence of video-surveillance cameras in the area of the arcades of the establishment denounced, affecting the right of third parties without just cause.

Along with the claim, provide evidence (Photographs No. 1-2) that proves the presence of a device(s) installed in the arcade area, which allows to obtain images of passers-by without just cause.

Second. The installation of an external device is accredited, on which the denounced does not make any manifestation.

Third. It is proven that the respondent does not have a form(s) available. tion of customers who may require it.

Fourth. It does not cost you to have the proper authorization for the installation of the device.

I had outside

#### FOUNDATIONS OF LAW

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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

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In the present case, we proceed to examine the claim dated 03/08/19

by means of which the main fact is transferred to this organism:

“Presence of video-surveillance cameras in the arcade area of the establishment denounced, affecting the rights of third parties without just cause”.

The "facts" described above imply an affectation of the content of the art. 5.1 c) RGPD, by having video-surveillance cameras that obtain images of the sidewalk, affecting the right of passers-by who walk freely along the zone.

“Personal data will be: adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed (“data minimization”)”.

The treatment of images in public places can only be carried out -in your case and prior compliance with the legally enforceable requirements-, by the Forces and Security Forces, unless the exception established in article 4.3 operates of Instruction 1/2006, of November 8, of this Agency, which establishes: "the maras and video cameras installed in private spaces will not be able to obtain images of public spaces unless it is essential for the purpose of surveillance that is intended, or it is impossible to avoid it due to their location. In any case, any unnecessary data processing for the purpose should be avoided. persecuted”.

In no case will the use of surveillance practices beyond the en-object of the installation and in particular, not being able to affect the public spaces surrounding spaces, adjoining buildings and vehicles other than those accessing the space.

guarded man

Article 22 section 2 of the LOPDGDD (LO 3/2018, December 5) provides: "

Images of public roads may only be captured to the extent that it is impressive.

disposable for the purpose mentioned in the previous section.

The reported establishment replies to this agency accrediting having

informative poster, indicating the person responsible for processing the images, although

silent about the cameras installed outside the establishment, which

They are the ones denounced by the neighbors.

The evidence provided by the complaining party (Doc. No. 1-2) proves indubi-

installation of a camera outside, being oriented without cause

justified towards public space.

III

In accordance with the evidence available in this proceeding,

sanctioning procedure, it is considered accredited that the defendant has a system

group of video-surveillance cameras that capture public space without just cause,

affecting the rights of third parties.

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The known facts constitute an infraction, attributable to the claimant.

mado, for violation of art. 5.1 c) GDPR.

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 equivalent amount.

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

previous financial statement, 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;

The installed camera(s) disproportionately captures public space,

so that there are less harmful means to the rights of third parties to install the

same.

When motivating the sanction to be imposed, the following is taken into account:

-Through it, images of passers-by are obtained

on the public sidewalk without just cause, since the same purpose is achieved with a

exclusive orientation towards the facade of the premises to be protected (art. 83.2 a) RGPD).

-It should have been foreseen after the complaint filed, that the camera was wrongly oriented

tada, so the conduct is considered negligent to a slight degree (art. 83.2 b)

GDPR).

Therefore, it is appropriate to order the imposition of a sanction located on the lowest scale

for this type of infringement for the reasons stated, valuing the collaboration

with this body of the accused, encrypting the same in the amount of

€3,000 (three thousand euros), considering the lack of a previous offense in this Agency and

It is a small catering establishment.

All this without prejudice to proceeding to reorient the camera in question

so that it is oriented preferably towards the façade or is relocated to comply with

comply with its purpose, but respecting the affected rights.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE GRUPO CAROLIZAN, with NIF B02614527, for an infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a fine of €3,000 (three thousand euros).

SECOND: NOTIFY this resolution to the entity denounced GRUPO CAROLIZAN and REPORT the result of the actions to the ASSOCIATION DAMNIFIED RESIDENTS CALDEREROS, CONCEPCION AND ADY STREETS.

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THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co-

of the Public Administrations (hereinafter LPACAP), within the term of payment

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened in the name of the Spanish Agency

Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of

Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary payment will be until the 20th day of the following month or immediately after, and if

is between the 16th and last day of each month, both inclusive, the term of the

payment will be until the 5th of the second following month or immediately after.

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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

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 LPA-

CAP, the firm resolution may be provisionally suspended in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other registers provided for in art. 16.4 of the city

tada Law 39/2015, of October 1. You must also transfer to the Agency the documentation

certifying the effective filing of the contentious-administrative appeal. Yes

the Agency was not aware of the filing of the contentious-administrative appeal

nistrative within two months from the day following the notification of the pre-

This resolution would end the precautionary suspension.



Sea Spain Marti

Director of the Spanish Data Protection Agency

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