

□ Procedure No.: PS/00098/2020

938-300320

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: D. G. OF THE CIVIL GUARD - POSITION OF \*\*\*LOCATION.1 (\*in  
hereinafter, the claimant) on February 3, 2020 filed a claim with the  
Spanish Data Protection Agency. The claim is directed against ILERDA  
LESHORES CAFETERIA SLU with NIF B25592338 (hereinafter, the claimed). The  
reasons on which the claim is based are "installation of video-surveillance system"  
without having an informative poster adequate to the regulations in force.  
Along with the claim, provide a copy of the Complaint Act that verifies the  
infractions presumably observed by the Security Forces and Bodies  
displaced to the scene of the events.

SECOND: 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 13 of the RGPD, typified in Article 83.5 of the RGPD.

THIRD: The database of this body was consulted on 09/04/20, no  
There is no allegation regarding the facts that are the subject of the complaint.

### FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-  
control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-  
rector of the Spanish Agency for Data Protection is competent to initiate and

to solve this procedure.

II

In the present case, we proceed to examine the Complaint forwarded to this Agency by the State Security Forces and Bodies, motivated by the irregularities observed served in the denounced establishment, as it lacks the mandatory sign informative, adapted to the regulations in force.

The RGPD obliges data controllers to offer interested parties a ma-  
More information about the treatments that are carried out and the way to exercise the rights

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guys. All those responsible must comply with this obligation of transparency, regardless of its size as an organization.

The obligation to inform interested persons about the circumstances regarding the processing of your data falls on the person responsible for the Treatment.

Article 22.4 LOPDGDD 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 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 person in charge of the treatment must keep available to the affected the information referred to in the aforementioned regulation.

Likewise, you must have an informative form(s) available to any customer who may require it inside the establishment, so that he can recall it if required, being able to consult it on the website of this body [www.aep.es](http://www.aep.es) in the Video-surveillance Section "forms and other models".

III

In accordance with the evidence available in this proceeding, penalty, it is considered that the defendant has a video-surveillance system in your commercial establishment, although you do not have the mandatory computerized poster indicated by the data controller and how to exercise the rights recognized. known in the regulations in force.

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

"The documents formalized by the officials who are recognized as condition of authority and in which, observing the corresponding legal requirements, the facts verified by those are collected will prove them except prove the contrary".

In such a way that the absence of an informative poster in the state is accredited. denounced establishment, when such an extreme was verified by the acting force displaced given to the scene of the events, which determines that it does not report on the responsible, nor the way to exercise the rights regulated in articles 15-22 RGPD.

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

made, for violation of the content of art. 13 GDPR.

The art. 13 GDPR provides the following:

"When personal data relating to him is obtained from an interested party, the person in charge of treatment, at the time these are obtained, will provide you with all the information

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tion indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the treatment to which the personal data is destined and the basis legal treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interest of the person in charge or of a third party;

e) the recipients or categories of recipients of the personal data, in your case;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a decision of adequacy of the Commission, or, in the case of transfers indicated in Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been lent (...)."

So that all that potential "client" of the establishment must know

certify that it is a video-monitored area, that your data is being processed

as well as who is the main person in charge of the treatment, informing him of the

way to be able to exercise their rights in their case, providing them with the necessary forms and means for this purpose.

IV

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:

b) the rights of the interested parties according to articles 12 to 22;

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation provides

ne in your art. 58.2 b) the possibility of sanctioning with a warning, in relation to what

stated in Recital 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 a sanction.

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

special attention to the nature, seriousness and duration of the infringement, its character

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intentional, to the measures taken to alleviate the damages suffered, to the degree

liability or any relevant prior violation, to the manner in which the authority

control authority has become aware of the infraction, compliance with measures

measures ordered against the person in charge or in charge, adherence to codes of con-

conduct and any other aggravating or mitigating circumstance.”

The absence of previous infractions is taken into account, as well as the fact that it is

of a small hotel establishment with little knowledge in the matter

that concerns us, to propose a sanction of warning; Although you must prove

irrefutably compliance with the required measures, carrying out the actions

necessary for the legalization of the system object of denunciation.

The complaint must be accompanied by the necessary evidence that proves the compliance with the measures (e.g. photograph of the informative poster placed in a visible place, etc).

Remember for the appropriate legal purposes, that the lack of collaboration with this Agency may lead to the opening of a sanctioning procedure of an administrative nature, under the terms of art. 72.1 letter o) LOPDGDD.

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 ILERDA LESHORES CAFETERIA SLU, with NIF B25592338, for an infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD, a warning sanction.

SECOND: REQUIRE the accused to legalize the system by placing a sign informative duly approved, accrediting such extreme to this Agency to the appropriate legal effects.

THIRD: NOTIFY this resolution to the reported entity ILERDA LESHORES CAFETERIA SLU and REPORT the result of the actions D. G. OF THE CIVIL GUARD - POST OF \*\*\*LOCALITY.1

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

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day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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