

938-0419

Procedure No.: PS/00130/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: Don A.A.A.

(ACTIVE CITIZEN DEFENSE) (\*hereinafter, the  
claimant) dated November 30, 2018 filed a claim with the  
Spanish Agency for Data Protection, motivated by data processing  
carried out through cameras of a video surveillance system whose owner is  
DUNNES STORES ANDALUCIA S.A. with NIF A29139037 (hereinafter the claimed)  
installed in Avda Carmen Saénz de Tejada (C.C. Hiper Andalucía)-Las Lagunas de  
Mijas- Malaga.

The grounds on which the claim is based are as follows:

“the cameras are apparently of the “dome” type whose orientation we do not know and  
they are oriented directly to the public road adjoining the plot (...) both  
they lack any distinction in the advertising support or its surroundings that may  
inform (...)”—folio nº 1--.

The cameras object of complaint (Camera 1 and 2) are installed  
below the Dunnes Stores information sign in a vehicle roundabout area  
(Photographic proof nº1).

SECOND: On 10/04/18, the claim was transferred to the entity  
denounced Dunnes Stores Andalucía S.A, so that it would allege what in law  
deemed appropriate in relation to the denounced cameras, stating as notified

in the computer system of this organization.

THIRD: On 12/19/18, this agency received written allegations of

the entity denounced—Dunnes Stores Andalucía S.A—stating the following:

“The person in charge of the installation is Dunnes Stores Andalucía S.A with address

in Camino de la Puradora S/N, 29651, Mijas Costa, Málaga, with NIF nº. A-

29139037 and contact telephone number +34 61063\*\*\*.

The visualization and treatment of the images captured by the cameras have

been entrusted to Compañía de Seguridad Omega, S.A. The requested contract

provided as DOCUMENT No. 3.

Dunnes is currently in the process of adapting its policies in

regarding video surveillance to the General Data Protection Regulation and the expected

and recently approved new Data Protection Law, which

It includes

specific provisions in this regard. To do this, Dunnes will follow the program of

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adaptation of the aforementioned Regulation already undertaken by its Irish parent company for the group

in the EU”.

FOURTH: On April 1, 2019, 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 of the RGPD, typified in Article 83.5 of the RGPD.

FIFTH: On 05/03/19, this Agency received a written statement of allegations from the

entity reported Dunnes Stores Andalucía S.A stating the following:

“That in line with the proposals of the AEPD in the FJ IV of the Start Agreement

(...) Dunnes has taken measures so that the cameras do not continue recording or re-recording images of the areas that are considered disproportionate by the AEPD.

In this sense, these areas have been suppressed, and it is NO longer possible displayed on the screen in real time, nor are they recorded or stored by the system (...)

In this way the cameras only obtain images of the perimeter of the center commercial. This test brief is attached for these purposes as Document no.1 Such images are necessary for security purposes.

That by virtue of the foregoing I request (....)"

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

In this proceeding, the following are considered proven facts:

#### FACTS

First: On 11/30/18 a claim is received at this Agency through the which translates as the main "fact" the following:

"the cameras are apparently of the "dome" type whose orientation we do not know and they are oriented directly to the public road adjoining the plot (...) both they lack any distinction in the advertising support or its surroundings that may inform (...)"—folio nº 1--.

Second: It is accredited that the person responsible for the installation is the entity Dunnes Stores Andalucía S.A with NIF nº. A-29139037.

Third: It is accredited that the entity --Dunnes Stores. It has various Informative posters in the perimeter area of the establishment informing the customers and third parties that it is a video-monitored area.

Fourth: It is accredited that the visualization and treatment of the images have been entrusted to Compañía de Seguridad OMEGA S.A. The contract is provided as

Evidence document No. 3.

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Fifth: The entity denounced has proceeded to reorient the cameras that obtained images of public space, providing documentary evidence (eg impression screen) where you can see the measures taken.

Sixth: Dunnes is currently in the process of adapting his policies in regarding video surveillance to the General Data Protection Regulation and the expected and recently approved new Data Protection Law, which

It includes

specific provisions in this regard.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDPGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

On 11/30/18, this Agency received a claim from the Defense Association

Active Citizen through which the following is transferred as the main "fact":

"the cameras are apparently of the "dome" type whose orientation we do not know and they are oriented directly to the public road adjoining the plot (...) both they lack any distinction in the advertising support or its surroundings that may inform (...)”—folio nº 1--.

The cameras object of complaint (Camera 1 and 2) are installed below the Dunnes Stores information sign in a vehicle roundabout area (Photographic proof nº1).

Security cameras installed in shopping centers cannot obtain images of public space, which must be limited to the surroundings of the shopping center in any case.

Security cameras installed in private spaces will not be able to obtain images of public spaces, the security function of public spaces corresponds exclusively to the State Security Forces and Bodies, not to Private Security Companies.

The treatment of images in public places can only be carried out -if applicable 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 cameras 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 is impossible to avoid because of the location of those. In any case, any unnecessary data processing should be avoided. for the intended purpose"

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The Private Security Law, in its Article 42 on Video Surveillance Services establishes:

"Cameras or video cameras may not be used for private security purposes to take images and sounds of roads and public spaces or public access except in the cases and under the terms and conditions provided for in its specific regulations, prior administrative authorization by the competent body in each case.

The known facts could constitute an infraction, attributable to the claimed, for violation of article 5 RGPD, by adopting a measure not allowed legally and be obtaining images for control purposes outside of cases allowed.

The entity denounced in a written statement of allegations (05/05/19) has proceeded to reorientation of the cameras in question, providing documentary evidence (photographs Annexes 1st and 2nd) where they only capture the perimeter space of the Center commercial "for security reasons" of the facilities.

It should be noted that the system had the mandatory informative posters in a visible area at the access doors to the establishment of the shopping center, without that the complainants previously contacted the entity responsible for the themselves.

Remember the duty to have form(s) available to the "clients" of the establishment who may need it in case of exercising the rights recognized in current regulations, in the cases provided.

### III

Article 83 section 5 of the RGPD provides the following:

"Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9; (...)"

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation

with 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

Special attention should be paid to the nature, seriousness and duration of the infringement, its

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

the degree of liability or any relevant prior violation, the manner in which

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that the control authority has been aware of the infraction, compliance

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

conduct and any other aggravating or mitigating circumstance.”

In the present case, it is taken into account that of the total number of cameras in the system, only

two were obtaining images of public space in a minimal portion,

(such as the telephone booth and the nearby road), which has signs

informative and that they were adapting it to the regulations in force, collaborating

at all times with this body.

IV

Based on the evidence provided, it can be concluded that the entity denounced

had cameras that were obtaining partial images in a way

disproportionate amount of public space, although on the occasion of this proceeding

measures have been taken to reorient them, which are adjusted to the day

from the date to the current legislation.

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: PROCEED to WARN the reported entity DUNNES STORES

ANDALUCIA S.A for the infringement of the content of article 5 letter c) RGPD, having had cameras installed that disproportionately obtained images of public space without just cause.

SECOND: NOTIFY this resolution to the entity denounced DUNNES STORES ANDALUCIA S.A.

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 month from

counting 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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