

□ Procedure No.: PS/00107/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Mrs. A.A.A. (*hereinafter, the claimant) dated February 12,
2020 filed a claim with the Spanish Data Protection Agency. The
claim is directed against GALAPABAR DRINK & MUSIC, S.L.U with NIF
B87563524 (hereinafter, the claimed one). The grounds on which the claim is based are
"installation of cameras" that could be poorly oriented, obtaining images of
public space without just cause.

Together with the claim, it provides documentary evidence (Annex I) that proves the
presence of some kind of device.

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 03/05/20, the claim is TRANSFERRED to the

denounced so that he can allege in law what he deems appropriate in relation to the system installed.

FOURTH: On 03/09/20 allegations are received from the entity denounced stating the following:

-That posters are posted both inside and outside

informative and the duty to inform is fulfilled as specified in the Instruction 1/2006.

-There is a video-surveillance system with two recorders that control the safety of the hotel industry and customers and establishments.

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2/8

-That the exterior cameras are installed to monitor the facades of the premises,

as well as at the same time the public space that we have authorized as terraces

and therefore they are part of the establishment as they are lands attached to it as they are municipal concession (...).

...we understand that almost everything you record is legally licensed terraces

and therefore part of the activity, which if it meets all the requirements in terms of security, proportionality (...)

That the City Council of Galapagar with File No. ***FILE.1 already

replied to this lady about all these reported issues, understanding and so she was made it clear that there was no illegality in any of the issues raised by her (...)

including the cameras that you request from us.

The AEPD requires the owners of the establishment of hotel BAR MERAKI, in Calle ***DIRIMIENTO.1, the same as we were ask about the cameras they have installed outside, and if possible, report on the legality, the field of vision of the cameras they have, the purposes, uses, etc.

FIFTH: On 04/25/20, the Agreement to Start the procedure was issued with reference number PS/00107/2020, as there are indications of the alleged commission of an infringement of article 5.1 c) RGPD, by having cameras oriented towards the exterior of the establishment with presumed capture of public space.

SIXTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written pleadings in which, in summary, it states the following:

- That both inside and outside, posters are placed informative and the Duty to Inform is fulfilled as specified in the instruction 1/2006 in its article 3 "Information".
- That the cameras are registered both in the AEPD and in the Registry Municipal Police, for what we attach in ANNEX 2, the documents corresponding.
- The 4 exterior chambers are located 2.50m from the ground, in the facade corners, focusing on the glass facades of the premises and the tables of terrace, as well as the planters and equipment of the same, for which we enclose Screenshot of the monitor as seen by the 4 exterior cameras.
- Given the features, amount of storage in HD technology, and disc sizes, images are kept for less than 20 days by not have larger disks, however the system is configured and programmed, so that the images were automatically deleted after 30 days.
- Report from the AEPD on the suitability or otherwise of the installation of the cameras

of my establishments, based on the information and documentation provided, to
that the owner of the MERAKI establishment does not continue to bother us again,
taking into account they take images only of terraces, seeing the pedestrian zone of the

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3/8

Via publishes the minimum essential and only for the reasons of the location where
can be placed, as well as for the times that we have been required copies of
the images by the Police, the Civil Guard and even the Courts to clarify and
investigate crimes against people and things.

SEVENTH: On 08/04/20, a "Resolution Proposal" was issued through the
which the commission of administrative infraction was considered accredited, when capturing
disproportionately public space, proposing a sanction of
Warning with the measure of adjusting the system to current legislation.

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

PROVEN FACTS

First. On 02/12/20, this Agency received a claim from the complainant
by means of which the following is transferred as the main fact:

"installation of cameras" that could be poorly oriented, obtaining
images of public space without just cause.

Together with the claim, it provides documentary evidence (Annex I) that proves the
presence of some kind of device.

Second. It is identified as the main data controller is

Galapabar Drink & Music S.L.U with NIF B87563524, who has two

adjoining hotel establishments in Calle

Y

***ADDRESS.3 called --GALAPABAR DRINK & MUSIC and CAFETERIA

PASTELERIA el RINCONCITO--, whose municipal operating licenses and

terrace occupancy licenses are in force.

***ADDRESS.2

Third. That the installation was carried out by the company Interactive Technical Services of

NetWorking y Protección de Datos S.L, with CIF B-80630726.

Fourth. That the cameras are registered both in the AEPD and in the Registry

Municipal Police, for what is attached in ANNEX 2, the documents

corresponding

Fifth. The establishment has an informative poster(s) both inside and outside.

abroad, although it is not adapted to current regulations, as it does not collect

any mention of the new GDPR.

The poster provided as documentary evidence Annex I contains a reference to the

repealed LO 15/99, December 13.

Sixth. There is no evidence that the establishment has an information form

available to customers who may want to exercise the rights recognized in

articles 15-22 GDPR.

Seventh. The availability of two recorders is accredited, with the system

with four exterior cameras (Annex Doc. III), which control the entire width of

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the public sidewalk, where the outdoor terrace area of the establishment is located

(s).

The system allows obtaining images of pedestrians passing through the area, and surroundings of the establishment in question.

FOUNDATIONS OF LAW

Yo

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

Before going into the substance of the matter, it should be noted that the allegations after the notification of the Home Agreement, they must be limited to the facts object of the complaint that confer.

The "alleged" illegalities of the establishment of the denouncing party, must be transferred, where applicable, to the local Police, so that they can carry out the necessary investigations. sas, being able after the same to be transferred to this Agency.

Article 62 section 1 of Law 39/2015 (October 1) provides the following:

"A complaint is understood as the act by which any person, in compliance with compliance or not of a legal obligation, informs an administrative body of the existence of a certain fact that could justify the initiation of ex officio of an administrative procedure.

III

In the present case, the claim dated 02/12/20 is examined by me- gave from which the following is transferred as the main fact:

"placement of a video-surveillance camera" that would ask to suppose a violation of his intimacy (folio nº 1).

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 felled 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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5/8

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

On the part of individuals, it is not possible to install devices for obtaining images of public space, outside the cases allowed in the regulations.

IV

In accordance with the evidence available in this proceeding, sanctioning procedure, it is considered that the defendant has a camera system misguided video surveillance.

The exterior cameras cannot control the public thoroughfare, as they exceed the function them, so that they can only be installed for security reasons.

local authority, not being able to video-monitor the outside table area, or the passers-by.

You are walking on the sidewalk.

Article 22 section 2 of the LOPDGDD provides: "Only images may be captured genes of the public thoroughfare to the extent that it is essential for the purpose mentioned in the previous section".

In the present case, the installed cameras (Annex III) obtain images of the entire width of the public sidewalk, where the exterior area of the stadium is installed. establishment.

Security in public spaces corresponds exclusively to the Armed Forces. and State Security Corps.

The capturing and recording of images of identifiable people in a place with public and free access, which is not closed at any time and where there are no restrictions for its use or transit, it will be considered a "public space".

public" regardless of its ownership and therefore, the installation of video surveillance

Presence in these spaces will be the exclusive responsibility of the Security Forces and Corps. state authority.

The establishment may have duly informed interior cameras as well as at least one exterior camera oriented towards the façade of the establishment.

for its protection, although it cannot control the terrace area outside

Interior, supplying the functions of the State Security Forces and Bodies.

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6/8

The main reason alleged for the reported “security” of the facilities

It is amply fulfilled with the interior chambers, since they allow in their

obtain images in case of robbery with force in things (art. 238 CP).

Not having made any complementary allegation on the need

to maintain the installation of the exterior cameras.

For the reasons stated, the allegation of the accused party can be rejected,

that the cameras are “permitted” by the City Council or the Investigating Courts.

closest, as they only have a municipal license for the availability of

outdoor tables.

The task of monitoring them corresponds exclusively to the Forces and

Security Bodies, not being able to replace the powers of these.

The installation of the cameras does not justify the excessive control that with the same

more is done by affecting the data of third parties that are captured without their consent.

disproportionately when entering the field of vision of the same,

aspect is asserted by the accused when pointing out that “they have even

been provided to the Local Police and Court of Instruction” at the request of the same

mos (vgr. SAN 02/10/11 XXX).

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

mado, for violation of article 5.1 c) RGPD.

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;

v

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 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 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 conduct and any other aggravating or mitigating circumstance.”

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In the present case, collaboration with this body is taken into account,
to propose a sanction of Warning, subject to the requirement of adaptation
of the system to the regulations in force in the widely explained terms.

SAW

Based on the foregoing, it can be concluded that the defendant has a
video-surveillance system, which allows you to obtain images of public space, with
controlling the width of the street where they are located, not being the homologated signs
two to the regulations in force, lacking form (s) available to customers
(as) of the same.

It is considered correct to propose the withdrawal of the external camera(s), the adaptation
tation of the signage to the regulations in force, as well as accrediting the availability of
information form available to customers of the establishment.

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 GALAPABAR DRINK & MUSIC, on the accused entity,
S.L.U, with NIF B87563524, for an infringement of Article 5.1.c) of the RGPD, typified
in Article 83.5 of the RGPD, a sanction of warning.

SECOND: REQUIRE in the terms of article 58.2 d) RGPD to the party
denounced to proceed with the legalization of the system, proceeding:

- Have an informative form inside the establishment to
available to clients who may require it.
- Reorient the exterior cameras towards the exclusive zone of the façade of the
establishment, avoiding the capture of the width of the public sidewalk.

THIRD: NOTIFY this resolution to GALAPABAR DRINK & MUSIC,
S.L.U and INFORM the denouncing party Mrs. A.A.A.

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

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8/8

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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