

Procedure No.: PS/00090/2019

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before

Mrs. A.A.A. and Don B.B.B., by virtue of a claim filed by Don C.C.C. (in

hereinafter, the claimant) and based on the following:

BACKGROUND

FIRST: The claim filed by the claimant has an entry dated 11

December 2018 at the Spanish Data Protection Agency. the claim

is directed against A.A.A. And B.B.B., (hereinafter, the claimed (s).

The reasons on which the claim is based are "recently installed in the

farm three video-surveillance cameras, two of which point directly at

my house (...)"—folio nº 1--.

Together with the claim, it provides several photographs (document evidence 1, 2 and 3) that

prove the presence of a device that could be a video camera-

surveillance.

SECOND: On 02/19/19, the Agreement to Start the

Procedure with reference number PS/00090/2019 to the accused parties,

for them to claim about the installed device, for alleged infringement of the content

of article 5 RGPD, as well as on compliance with current legislation, without

it has been possible to reliably notify.

THIRD: On 02/20/19, an instruction proceeding was issued

requiring the collaboration of the Security Forces and Bodies closest to the

place of the events, specifically to identify the alleged perpetrator and

specify the same based on the ocular inspection of the denounced cameras.

FOURTH: On 03/05/19 a communication is received from the Local Police (Council

Cangas) indicating that there was already a previous report as the system was denounced.

-Identifies the person in charge of the facility, Ms. A.A.A., with DNI ***DNI.1, residing in ***LOCALIDAD.1 (Germany), but with summer residence in the location.

-Indicates the presence of three video-surveillance cameras on the property of the denounced, anchored in the outer wall, not being able to verify that the same are "simulated" or if they are connected. One camera is oriented towards a closure of the property that adjoins the property of the complainant (...).

-Indicates that they have tried to contact the same but that it is not location possible.

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2/6

-That there is no informative poster, nor does it have any poster indicating the person to whom you can turn.

PROVEN FACTS

FIRST: On 12/11/18, a claim from the complainant by means of which he states:

“Three video-surveillance cameras were recently installed on the farm, two of which point directly towards my house (...)”

“In fact there is NO warning sign, nor is the person responsible identified to which to address (...)—folio nº 1--.

Documentary evidence is provided (photograph 3) confirming the presence of

a camera in the outer wall in a transit area.

SECOND: It is accredited that the person in charge of the installation is Mrs. A.A.A., with DNI ***DNI.1, residing in ***LOCALIDAD.1 (Germany), but residing summer in the town.

THIRD: The installation of a video-surveillance system is accredited, composed of three chambers, at least one of them oriented towards the area that adjoins disproportionately with the complainant's property.

FOURTH: It is proven that they do not have any informative poster, informing that it is a video-monitored area for the appropriate legal purposes.

FIFTH: It has not been possible to determine the fictitious nature of the cameras, although the indications suggest that they are operational.

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 art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

II

The defendant is imputed the commission of an infraction for violation of article 5 of the RGPD, which states that: Personal data will be:

“c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

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The installation of this device (s) devoid of an informative sign, is affecting the tranquility of the residents of the area, who are intimidated by the himself, and lacking the necessary information to be able to contact the responsible for the installation.

The infraction is typified in article 83 section 5 of said rule, which considers as a very serious infraction the infraction of “the basic principles for the treatment, including the conditions for consent under articles 5, 6, 7 and 9”.

III

In the present case, we proceed to examine the claim dated 02/19/19 by means of which the following is transferred to this body:

“Three video-surveillance cameras were recently installed on the farm, two of which point directly towards my house (...)”—folio nº 1--.

The facts are therefore specified in the installation of some type of device (camera) disproportionately, so that it is oriented towards property private and/or public space, without just cause.

On 02/20/19 the collaboration of the Local Police of the municipality is required, who send a report identifying the person in charge of the installation as Doña A.A.A., with DNI ***DNI.1, residing in ***LOCALIDAD.1 (Germany), but residing summer in the town.

The installation of three cameras is verified (two with orientation towards the interior), while a third is oriented towards the communal area on top of a massif of stones

It does not have any informative poster informing that it is a zone

video-surveillance, indicating the person in charge, as well as an effective address to which power in your case address.

Article 74.1 a) of the LOPDGDD (LO 3/2018, December 5), qualifies as a lack

Minor, for legal purposes:

“Breach of the principle of transparency of information or the right of information of the affected party for not providing all the information required by the articles 13 and 14 of Regulation (EU) 2016/679”.

It has not been possible to verify the operability of the system, but the indications obtained indicate that the system is operational, that is, that it obtains images that can affect the adjoining neighbor and even transit areas without cause justified.

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4/6

It should be noted that anyone who installs this type of system, with the purpose of to protect your property, you must be responsible that it conforms to the current legality.

Thus, it must have an informative poster in a visible area, indicating the responsible for the file, and even if you reside abroad, indicate a mailing address email to which you can go, both any affected and in your case the Security Forces and Bodies.

It should be ensured that it is oriented towards its private area, not disturbing the privacy of the neighboring neighbors who can be seen intimidated for this type of device.

Article 22 LOPDGDD (LO 3/2018, December 5) provides the following:

"Physical or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of persons and goods, as well as their installations"

"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 device a connection code or internet address to this information" (*underlining belongs to this organization).

Thus, it is verified that the accused Ms. A.A.A. is responsible of the installation of a video-surveillance system, which is oriented in a disproportionate towards the private space of a third party and/or public without just cause, affecting the adjoining neighbors, not being the same provided with information poster and not having adopted any effective measure so that the different Administrations can communicate with it, especially if it spends long seasons in Germany.

IV

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD, in its art. 58.2 b) establishes 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 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 that the control authority has been aware of the infraction, compliance

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5/6

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 it is a citizen

foreigner, with little knowledge of the matter in question, the limited area

where the cameras are installed, as well as the absence of an administrative infraction in this regard registered by this body.

The foregoing does not prevent the imposition of corrective measures- ex art. 58.2 letter d)

RGPD--, such as the reorientation and/or reinstallation of the camera (s) object of

complaint, as well as the installation of at least one informative poster in a visible area

indicating the person in charge to whom you can contact, as well as additionally

an email address for any incident that may occur.

The measures adopted, if any, must be reported to this

agency, accrediting the same (vgr, photograph with date and time), indicating the

procedure number PS/00090/2019, so that they are incorporated

to the administrative file.

v

In accordance with the foregoing, after analyzing the circumstances of the case, it is verified

according to the indications obtained (Local Police report) that the denounced system is not adjusts to current legislation, proceeding to warn the accused party.

If a reasonable period of time elapses (eg three months) without having adopted none of the measures described, it will be possible to proceed to the opening of a sanctioning procedure of a pecuniary nature, given the situation of negligence serious in the fulfillment of the obligations required for this type of device, which which is communicated for the appropriate legal purposes.

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 Doña A.A.A. with NIF ***DNI.1, for one infringement of article 5 letter c) of the RGPD, typified in art. 83 par. 5 of the RGPD and classified as very serious, for the purposes of administrative prescription in art. 72.1 a) LOPDGDD, having installed a video-surveillance system without it being adjustment to the regulations in force, having to proceed:

- Place an informative device in a visible area indicating that it is video-monitored area, indicating the person in charge and the effective address to which heading down.
- Reorient and/or relocate that camera(s) that may be misoriented, avoiding the affectation of the rights of third parties.

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6/6

SECOND: NOTIFY this resolution to the accused party, Mrs. A.A.A. Y,

according to art. 77.2 of the RGPD, and INFORM the claimant—Don C.C.C.-- about the result of the claim.

In accordance with the provisions of article 50 of the LOPDGDD, 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. 114.1 c) of the LPACAP, 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.

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