

□ Procedure No.: PS/00108/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: GENERAL DIRECTORATE OF THE CIVIL GOVERNMENT, POSITION OF ***LOCATION.1

(hereinafter, the claimant) on November 27, 2019 filed

claim before the Spanish Data Protection Agency. The claim is

directed against Don A.A.A. with NIF ***NIF.1 (hereinafter, the claimed one).

The reasons on which the claim is based are "the presence of

video-surveillance camera inside the vehicle oriented towards public space" without
just cause.

Images of the camera are attached, as well as a photographic report. (Exhibit
evidence no. 1).

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
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.

In addition, the following extremes are noted:

-It is recorded that Mr. A.A.A., with DNI ***NIF.1, is identified as the main person under investigation.

-It is recorded that the accused has a video-surveillance device oriented

ted towards public space, with operability verified by the FFCC.

-The public space that video-surveillance is specified in C / *** ADDRESS.1

(***LOCATION.1-Toledo).

-There is no information sign indicating that it is a video surveillance area.

lada, reporting the reason (purpose) of the treatment.

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-There are indications that point to an intentionality in the control of space

public, for issues related to carrying out unspecified criminal activities.

tar for the accused.

-It is verified that the camera is a 360° brand Xioami My Home Security which

allows it to be controlled with a mobile application, viewing the images directly on

the mobile device.

THIRD: 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 5.1.c) of the RGPD, typified in Article 83.5 of the

GDPR.

FOURTH: The database of this Agency consulted on 09/04/20 does not contain

any allegation in relation to the facts subject to transfer.

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 11/27/19, this Agency received a claim from the Civil Guard

whereby the following is transferred as fact:

“The presence of a video-surveillance camera inside the vehicle is noted.

oriented towards public space” without just cause.

Images of the camera are attached, as well as a photographic report. (Exhibit evidence no. 1).

Second. The resident of the locality, Don

A.A.A.

Third. The possession of a video-surveillance camera oriented without

justified cause to public space, corroborating the forces acting the

operability of the same inside the vehicle of its ownership.

Fourth. There is no evidence that the defendant has placed any information poster, nor no explanation in this regard has been given in legal form.

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.

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In the present case, the claim dated 11/27/19 is examined by me-
of which the Security Forces and Bodies transfer as the main fact the

Next:

“When inspecting the defendant's vehicle, the presence of a camera is observed.
camera installed in the trunk tray facing public space” without cause
justified (folio n°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.

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 inti-

measured 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.

III

In accordance with the evidence available in this proceeding, sanctioning procedure, it is considered that the defendant has a visual device deo-surveillance inside your vehicle oriented towards public space.

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, teeth the facts verified by those are collected will prove them except prove the contrary”.

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The existence of an image recording device in the interior of the vehicle owned by the accused, oriented in such a way that it allows control public space, without just cause.

The known facts constitute an infraction, attributable to the claimant. mado, for violation of article 5.1 c) RGPD, previously transcribed.

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:

a)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with

with the following criteria established in article 83.2 of the RGD:

-the nature of the behavior described, by having a camera obtaining

images of public space, furtively with reasons not clarified to the day of the

date (art. 83.2 a) RGD).

- the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

measure (art. 83.2h) RGD).

Based on the foregoing, given the seriousness of the facts reported by

the FFCC, it is considered correct to impose an initial penalty of €1,500 (one thousand five hundred

tos Euros), located on the lowest scale for this type of behaviour.

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 the defendant Don AAA, with NIF ***NIF.1, for an infraction

of Article 5.1.c) of the RGD, typified in Article 83.5 of the RGD, a fine of

€1,500 (One thousand five hundred Euros), by having a video-surveillance device

operating towards public space.

SECOND: NOTIFY this resolution to Don A.A.A. and REPORT the

result of the actions to GENERAL DIRECTORATE OF THE CIVIL G., POSITION OF

***LOCATION.1

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, on Administrative Procedure Common Public Administrations (hereinafter LPACAP), within the payment term

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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 on behalf of the Agency Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case Otherwise, it will be collected in 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

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
day 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
LPACAP, the firm resolution may be provisionally suspended in administrative proceedings
if the interested party expresses his intention to file a contentious appeal-
administrative. If this is the case, the interested party must formally communicate this
made by writing to the Spanish Agency for Data Protection,
introducing him to
the agency
[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other
records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also
must transfer to the Agency the documentation that proves the effective filing
of the contentious-administrative appeal. If the Agency were not aware of the
filing of the contentious-administrative appeal within two months from the
day following the notification of this resolution, it would end the
precautionary suspension.

Electronic Registration of
through the
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Director of the Spanish Data Protection Agency
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