

□ File No.: PS/00409/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: Mrs. A.A.A. (\*hereinafter, the complaining party) dated May 7,  
2021 filed a claim with the Spanish Data Protection Agency. The  
claim is directed against B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the part  
claimed). The reasons on which the claim is based are succinctly:  
following:

“That it is an orchard farm where there are three houses, one rented, one planted,  
It's downstairs where my sister lives (...) and on the first floor where I and my son live.

I also state that the family relationship is totally null for reasons that are-  
They are prosecuted at this time.

That the cohabitants on the ground floor have set up 8 video-monitoring cameras  
24-hour service throughout the common-use area (...) seeing us both intimidated, my son  
like me (we live on the first floor)...

These cameras therefore record things that belong to me, such as a car, motorcycle and  
warehouse where I keep belongings. Controlling the entrances and exits at all times  
of my house.

To state that those video-surveillance cameras, in addition to recording the areas  
Common ones record Public Road.

I state that I am heir to my father, along with my sister B.B.B. and C.-  
DC (she has the same inheritance) and my mother who is also usufructuary (...)” (folio  
No. 1).

Together with the claim, it provides documentary evidence (Annex I) that accredits presence of multiple devices.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), said claim was transferred to the claimed party in fe-date 06/04/21, to proceed with its analysis and inform this Agency on the period of one month, of the actions carried out to adapt to the foreseen requirements cough in the data protection regulations.

THIRD: On 07/20/21 a response was received to the request of this Agency by the respondent stating succinctly the following:

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“That the cameras are installed by Doña D.D.D. who owns ria and usufructuary for life of the entire estate where it is installed.

To have access to the house, it is done from a lane where it is not done any recording on public roads. This fact is accepted and tolerated by the caregiver.

Mrs. D.D.D. which is his other daughter (...) The recording period is 9 weeks”

Documentary evidence is attached (Annex I) that proves the presence of the devices in the dwelling in question.

FOURTH: On 08/09/21, an extension of the response to the facts is received object of claim by the claimed party, stating the following:

“...as we have accredited in the file referenced above by me-

of this document, I evacuate the procedure conferred on this party by providing the documentation

mention requested by photographic report (...)."

FIFTH: On August 10, 2021, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim presented by the party clamant.

SIXTH: On September 27, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the defendant, with glo to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-Common Administrative Procedure of Public Administrations (hereinafter, LPA-CAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

SEVENTH: When the database of this Agency was consulted on 11/08/21, no received any allegation, nor has the characteristics of the system under investigation been clarified. claim.

EIGHTH: On 11/08/21, a "Resolution Proposal" was issued, agreeing on It gives propose a sanction of €1500, for the infringement of art. 5.1 c) GDPR, as well as another of €1,000, as there is no information poster not informing that it is a zone video-surveillance, infringement of article 13 of the current RGPD.

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

#### PROVEN FACTS

First. The facts bring cause of the claim dated 05/07/21 through the which is transferred the presence of video-surveillance cameras that affect without just cause tified to common areas of the house in which he lives.

Together with the claim, it provides documentary evidence (Annex I) that accredits presence of multiple devices.

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Second. Doña B.B.B., a relative of the claim, is identified as the main person responsible.

mante, being the owner of the property Doña D.D.D.

Third. It is accredited by documentary evidence (Annex I) the presence of several video-surveillance devices that capture public space adjacent to the home where some of them are installed.

Fourth. The presence of an informative poster(s) is accredited, indicating that It is a video-monitored area, indicating an address of the person in charge of the Treatment of personal data.

Fifth. Between the parties there are various conflicts judicialized according to manifestation of the one claimed, not accrediting the nature of the area adjacent to the dwelling main despite the requirements of this organism.

Sixth. It is accredited that the video-surveillance device records the images that obtained by carrying out a "processing of data" of a personal nature associated with a person identified or identifiable physical

## 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 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 resolve this procedure.

II

In the present case, the claim dated 05/07/21 is examined by me-

gave from which the following is transferred as the main fact:

“That it is an orchard farm where there are three houses, one rented, one planted,

It's downstairs where my sister lives (...) and on the first floor where I and my son live.

I also state that the family relationship is totally null for reasons that are-

They are prosecuted at this time.

These cameras therefore record things that belong to me, such as a car, motorcycle and

warehouse where I keep belongings. Controlling the entrances and exits at all times

of my house.

I state that I am heir to my father, along with my sister B.B.B. and C.-

DC (she has the same inheritance) and my mother, who is also a usufructuary (...)—fo-

mess no. 1--.

The above "facts" are summarized, regardless of the family conflict

between the parties, to the presence of video-surveillance devices that affect

so to the privacy of the claimant (s), when "treating their data" in the entrances and exits of

the dwelling, as well as according to the declaration of the claimant of the public transit zone.

co without just cause.

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The physical image of a person, in accordance with article 4.1 of the RGD, is a personal data.

and its protection, therefore, is the subject of said Regulation. In article 4.2 of the

GDPR defines the concept of "treatment" of personal data.

It is, therefore, pertinent to analyze whether the processing of personal data (image of the

natural persons) carried out through the reported video surveillance system is

in accordance with the provisions of the RGPD.

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

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.

indicative, indicating the purposes and responsible for the treatment, where appropriate, of the data of each

personal character.

In any case, the cameras must be oriented towards the particular space, avoiding

intimidate neighboring neighbors with this type of device, as well as control areas

transit of the same 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

responsible.

The purpose of this type of device is the protection of the home and farm

where it is against acts of theft with force in things, in such a way

that the cameras are oriented towards the main accesses (eg windows or door of

main entrance), without a priori there being internal control cameras if they are not

all parties agree on such aspect by means of the consented information.

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 provided that is available in the procedure

sanctioning party, it is considered that the claimed party has a camera system

of video-surveillance that affects the public and/or private transit area of the claimant.

After analyzing the allegations, it is considered that the exterior cameras affect an area that could be of public transit, in such a way that they are in willingness to obtain images of everyone who passes through the area, as well as those who enter/leave the dwelling excessively controlling aspects of life personnel without just cause.

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The evidence provided by the respondent allows us to infer that the cameras exteriors obtain images of a public road, without the allegations made allow this body to determine that the cameras are exclusively in the privative.

Nor has it been specified whether the claimants have given their consent expressly for the presence of the cameras, which state that they are affected in their intimacy for them, no additional explanation has been made to that effect.

The allegations must be clear enough to prove the legality of the system, focusing on whether consent can be proven informed of the complainants, the proportionality of the measure adopted and whether excessively affects non-property areas or deviates from function of these, which would be the protection of the home they share in situations of robbery with force on things.

The known facts constitute an infraction, attributable to the party claimed for the alleged infringement of art. 5.1 c) GDPR, cited above.

Reporting on video surveillance according to RGPD is an obligation contained in our legislative framework—art. 13 GDPR--.

To adapt to current regulations, the AEPD published the new mandatory poster cattery that must be located in spaces that are subject to video surveillance.

Article 22 section 4 of the LOPDGDD (LO 3/2018, December 5) provides:

“The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood to be fulfilled by placing an informative device in a sufficient place ciently visible 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 articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the device information I attach a connection code or internet address to this information”.

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)

b)

the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

the rights of the interested parties under articles 12 to 22;

When motivating the sanction, the following is taken into account:

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- the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the treatment operation in question, as well as the number number of interested parties affected and the level of damages they have suffered; (art. 83.2 a) RGPD), as the exterior cameras are oriented towards the public transit area. co.

- the intent or negligence in the infringement; (art. 83.2 b) RGPD), when controlling in excess public transit area, the behavior described being able to be considered a ne-gross negligence for the reasons stated.

According to the above, it is considered correct to impose a sanction encrypted in the amount of €2,500 (Two Thousand Five Hundred Euros), by having a camera system whose recording is excessive for the purpose pursued, assessing the absence of sanction. previous tions, as well as the initial collaboration with this Agency, sanction located in the lower scale for this type of behavior.

It is recalled that in accordance with art. 58.2 d) RGPD, this body can im-additionally put mandatory measures so that it proceeds "from a certain manner and within a specified period.

The party claimed must prove the legality of the system, for which it must provide tar screen print (date and time) of what is captured in your case, or in your case accredit the regularization of the system by adopting the necessary measures for it, without prejudice to the allegations that it deems accurate in relation to the facts described, that justify the recordings made (vgr. Complaints between the parties, robberies in the housing, etc.).

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE D.D.D., for a violation of Article 5.1.c) of the RGPD,

typified in Article 83.5 of the RGPD, a fine of €1,500 (One thousand five hundred euros).

SECOND: IMPOSE D.D.D. and B.B.B., for a violation of Article 13 of the

RGPD, typified in Article 83.5 of the RGPD, a fine of €1,000 (One Thousand Euros).

THIRD: ORDER the claimed in accordance with art. 58.2 d) GDPR for

that within a period of 1 month from the day following the notification of this ad-

ministerial to proceed:

-Regularize the legality of the system or, failing that, proceed to withdraw the same.

-Place, if applicable, in a visible place, an approved informative poster indicating

It is a video-monitored area.

FOURTH: NOTIFY this resolution to D.D.D. and REPORT the result of

proceedings to the claimant.

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FIFTH: 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, of the Administrative Procedure Co-

of the Public Administrations (hereinafter LPACAP), within the term of payment

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 ES900 0000 0000 0000 0000 0000, opened in the name of the Spanish Agency Data Protection Office at the CAIXABANK, S.A. bank. In the event Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the 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 It will be valid until the 5th of the second following month or immediately after.

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. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the resents may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from the date of the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and section 5 of the additional provision Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, within a period of two months from the day following the notification of this act, as provided for 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, may provisionally suspend the firm resolution in administrative proceedings if the interested party do states its intention to file a contentious-administrative appeal. If it is- In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-

Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

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Director of the Spanish Data Protection Agency

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