

□ File No.: PS/00521/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Don A.A.A. (*hereinafter, the complaining party) dated 01/16/20
filed a new claim with the Spanish Data Protection Agency. The
claim is directed against his ex-partner Doña B.B.B. with NIF ***NIF.1 (hereinafter,
the claimed party). The grounds on which the claim is based are as follows:

“Installation of a video-surveillance camera that affects common areas of your
personal intimacy by his ex-wife” (folio nº 1).

And provide the following relevant documents:

- Several photographs of the situation of the video surveillance camera in which
observes the camera above an access door and focusing on the front yard.
land of the property.

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-
cha 05/05/21 and 08/31/21, to proceed with its analysis and inform this Agency
within a month, of the actions carried out to adapt to the requirements
provided for in the data protection regulations.

The respondent has not made any statement or clarification on
the new device installed.

THIRD: The General Subdirectorate for Data Inspection proceeded to carry out
of previous investigative actions to clarify the facts in

matter, by virtue of the investigative powers granted to the authorities of control in article 57.1 of Regulation (EU) 2016/679 (General Protection Regulation) of Data, hereinafter RGPD), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following ends:

Such actions have been reflected in E/10111/2020, directing the actions against the claimed: B.B.B..

The information contained in the information systems is as follows:

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File E/01678/2019

As a result of a previous claim received by the same claimant against the same claimed, sanctioning procedure PS/00178/2019 was initiated in the that it was agreed to warn the defendant for the infringement of art. 5.1 c) RGPD, having installed a video surveillance device oriented towards the entrance of the house without justified cause affecting the privacy of the complainant, infringement typified in art. 83.5 letter a) RGPD, and require it so that, within one month from the act of notification, proceed to inform if you have a video surveillance system and its characteristics, contribution photograph of the approved poster and evidence in case of withdrawal of the camera.

Dated October 22, 2019 and registration number 050334/2019, within the term conferred, provide a photograph of the poster and a copy of the image captured by the camera which is on the balcony. It is found that the poster does not meet the requirements

regulations by not collecting the person responsible for the treatment or the possibility of exercising the rights provided for in articles 15 to 22 of Regulation (EU) 2016/679. Nope presents information about the video surveillance system.

This documentation shows that the additional camera is already installed subject of this claim (above the door).

Procedure E/00803/2020

Regarding these actions, on January 31, 2020, the Agencia Es-Department of Data Protection agreed to admit for processing the claim presented by the claimant.

Procedure PS/00021/2020

On October 13, 2020, in the, the Spanish Agency for the Protection of Data cough decided to impose the claimed, for a violation of art. 73 letter o) LOPDGDD, a penalty of €1,500, being punishable in accordance with art. 58.2 GDPR.

Procedure RR/00611/2020

The respondent argues that in procedure PS/00178/2019 she has delivered the requested documentation.

On December 15, 2020, the Spanish Data Protection Agency agreed to partially uphold the motion for reversal filed by the defendant against the resolution of this Spanish Data Protection Agency issued with dated October 13, 2020, in sanctioning procedure PS/00021/2020, nullifying the sanction imposed.

RESULT OF THE INVESTIGATION ACTIONS

The cause of the installation, according to a letter from the City Council (entry 000007128e2000004037) was the complaint against her ex-partner in the Court of First Instance Proceeding No. 2, from *** LOCATION.1, according to proceedings No. *** PROCEEDINGS.1, for a crime of coercion in the field of gender violence, the reasons why the claim

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mada, now appellant, installs the cameras because the claimant resides in the ground floor of said dwelling.

Regarding the new video surveillance camera object of these actions, it was constatata based on the photograph provided by the claimant and the documentation submitted by the person claimed with registration number 050334/2019 within the procedure mentioned sanctioning device that is placed at the entrance door of the residence. home of the claimed, that it is pointing directly to the patio of the property dad.

In the sentence issued by the Court of First Instance No. 2, of ***LOCATION.1 of dissolution due to divorce of the marriage is collected in point 5 USE AND ENJOYMENT ON FAMILY HOMES “The use and enjoyment of the upper part of the home that has been the domicile of the family, is attributed to the mother and the minor daughter, being the use and enjoyment of the lower part for the father.” This statement does not specify additional areas such as common areas or rights of way, but in the terms expressed in the sentence, the entrance patio that gives access to the two parts of the property, should be considered a common area or use and enjoyment of the claimant with the right incidentally for the one claimed, but never as exclusive to the one claimed, so the camera would be capturing images of an area that would not be for her exclusive use.

Given that, as stated above, in the same property both the claimant (lower part) and the claimed (upper part), in order to determine the al- range of the camera indicated in the claim, the claimed photograph is requested

of the image captured by this camera.

Despite being notified of this request for information dated 13

September 2021, as of the date of this report, no response has been received from the recurrent.

With no further evidence to investigate, and without any statements by the claimed party,

concludes from the graphic evidence that the claimed camera is focusing on

the area of common use (the entrance patio), that the informative poster does not comply with the requirements established in article 22.4 of the LOPDGDD, and that the environment cannot

be considered domestic since the usufructuaries of the common area towards which

the claimed chamber, after the divorce decree, do not constitute a family unit or

of coexistence.

It should be added that the defendant did not report the characteristics of the system either.

video surveillance (possible recording of images, storage, etc.) during the pro-

sanctioning proceeding PS/00178/2019 despite having been required by this Agency

FOURTH: On November 10, 2021, the Director of the Spanish Agency

of Data Protection agreed to initiate sanctioning procedure to the claimed, with

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in the

Article 83.5 of the RGPD.

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FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written

allegations dated 12/03/21 in which, in summary, it stated the following:

“No Violation. The resolution issued motivates the initiation of a proceeding sanctioning procedure based on facts denounced by the ex-partner of the firm. Keep in mind that they are totally uncertain.

Violation of the right to the presumption of Innocence (art. 24.2 CE).

It is evident that the investigating body has granted absolute certainty to the facts manifested by the denouncer, reaching manifestations such as that in the documentation provided in the previous procedure "it can be seen that the additional camera object of this claim is installed", which re-

It is totally striking, because as we insist, THERE IS ONLY ONE CAMERA INSTALLED, which was already the subject of a previous sanctioning procedure.

Therefore, absolute veracity has been conferred on the claims of the claim.

lover, ex-husband of my client, and based on them, and the documentation provided by him, interpretations and subjective assessments have been made, poured into "research results", and which also fit perfectly with the claimant's complaint, without curiously any diligence has been carried out investigation that has been aimed at clarifying the facts, violating the right to the presumption of innocence of my client. And this because it is not possible to destroy the presumption of innocence by evidence, suspicion of guilt or through a subjective assessment of the sanctioning right without supporting evidence of the facts on which it could be based.

Lack of typicity. It is a camera that exclusively captures images exterior of the signatory's home, within the scope of an activity of personal and domestic nature, to which the legislation on matters of data protection, since images are not captured of the public road, but of the interior of the House.

The resolution that upheld the appeal for reversal filed by this part in the previous sanctioning procedure, after going into the merits of the matter, partially the same, leaving the sanction without effect, being evident that the denounced fraction is not typical, as can be deduced from what was resolved in the prior transfer.

SIXTH: On 12/16/21, the defendant is requested in the investigation phase to provide a copy of the judicial sentence in order to analyze the strict terms of the same.

SEVENTH: On 01/31/22 a written statement of allegations to the request for evidence is received required stating "That I attach to this document a copy of the Judgment of Divorce relating to the signatory and her ex-husband, where it is stated that she is the signatory the one that has attributed the use of the upper floor of the family property and the complainant the House".

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EIGHTH: On 03/11/22, a "resolution proposal" is issued confirming the sanction described by having at least one video-surveillance camera that affects to common areas of the home, without the informed consent of your ex partner, proposing a sanction of €1,500, stating the same notified in legal form.

NINTH: On 04/06/22, a new document is received from the respondent stating the

Next:

"In the brief of allegations to the Home resolution, the veracity of

such assertions and proof of the non-existence of said statements was provided.

camera, although the Instructor now ignoring the facts (...) proposes the imposition of a penalty for facts other than those.

Consequently, the provisions of article 53.2 of the Law

39/2015, October 1, because in the proposed Resolution some

events other than those that motivated the initiation of this proceeding (...)

Likewise, the provisions of article 77 of Law 39/2015 have been violated

(LPAC) since having requested the opening of a probationary period, it has not been

agreed by the Instructor what is appropriate for the practice of the proposed test, nor is it

has issued a reasoned resolution of inadmissibility (...)

Based on the foregoing, I REQUEST that you consider this document submitted

and, by virtue of the allegations contained therein and prior legal procedures,

issue a resolution agreeing to leave without effect the sanctioning file and proceed to the

File of the same".

FOUNDATIONS OF LAW

Yo

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 re-

solve this procedure.

II

Before going into the substance of the matter, it is worth analyzing the complaints presented by the

claimed, considering that there is a violation of the right to defense (art. 24

CE), considering as "certain the manifestations of the counterparty" existing in

a single camera at all times.

It should be noted that the party complained against is notified of this Initiation Agreement

moment in which he has exposed in the exercise of his right to defense what he has estimated pertinent, without the instructor of the procedure granting greater or lesser veracity to the accusations of one or the other party.

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The complaining party indicates in his brief dated 01/16/20 that his ex-partner "not only has he not removed the camera but he has put another lower camera and it is recording at all times" (*bold belongs to this organization).

Therefore, it is appropriate to reject the claim of defenselessness manifested, since that the allegations made and the evidence provided are being taken into account at the precise procedural moment.

The requirements of this Agency have been different from the one claimed so that contribute what was specifically requested of him, existing a certain passivity of the same ma when responding within the deadlines set to what was specifically required.

In fact, in the appeal for partial reconsideration of their claims, sessions, the conclusion was reached that the failure to provide the required evidence das did not allow to prove the legality of the system, urging it to contribute "voluntary" of the same, an aspect that did not occur, giving rise to new several previous actions in relation to the installed video-surveillance system, being in-different if it is made up of one or several chambers.

In the Resolution dated 12/09/20, express mention was made of the following:

"The parties must provide at the precise procedural moment, all the necessary documentation, making a detailed explanation about the reason (s)

that justifies the presence of the camera or if you have opted for the removal of the same.

Likewise, they must prove that the informative poster indicates in their case, the person responsible for the treatment, in accordance with the regulations in force on the day of the date"

For the foregoing reasons, the claim of "Non bis In Idem" since in the response to the appeal brief the result was that this body could not specify the non-existence of the infraction object claim, continuing the investigations based on the existence of an infraction continued tion; in fact the camera is still installed and the operability of the itself is not questionable.

Finally, by means of a document dated 04/06/22, the respondent argues "nullity of the procedure" when the instructor of the procedure did not rule on the Proposed test request.

It should be remembered that on 12/16/21 a copy was requested in the test phase full version of the Judgment and/or judicial pronouncement on the form of distribution of property in which the parties cohabit, receiving a letter from the claimed date 01/31/22 stating the presentation of a copy of the same that there is no record entered as such in the computer system of this Agency.

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In relation to the requested evidence, the documents have been taken into account. account at the time of the instruction of this procedure, where they have been examined

ning each and every one of the documents provided, being writings that accompany on the other hand to the allegations made on 12/03/21.

In relation to the request for an on-site eye test at the scene of the events,

It should be pointed out that this Agency sent the Forces and Corps of

State Security on 08/04/20, giving rise to a Police Report dated

09/05/20 where the agents of the authority appear at the domicile of the par-

tes confirming the presence of the device object of claim.

The claimed party itself has at no time denied by evidence

objective documentary (eg photograph date and time) the presence of the same, being confirmed

the presence of the same in the different briefs presented, as well as by the

acting force, so the claim of nullity put forward must be dismissed,

because the facts have been widely confirmed, pretending to assert an artifice

legal argument analyzed as a purported request for evidence on a

"additional camera" that has not been raised by this Agency.

III

In the present case, we proceed to examine the new claim presented by fe-

cha 01/16/20 through which the main fact is transferred "the presence of

a video-surveillance device in the dwelling shared between the claimant (former pa-

fence) of the claimed one" being pointed towards the main shared access

do of the family dwelling "controlling the entrances/exits" of the dwelling in which

They cohabit on separate plants.

The facts under analysis may constitute a presumed infraction.

tion of art. 5.1 c) GDPR.

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 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.

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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.

IV

The presence of the device is not denied by either party, the claiming party
mently denounces its presence and the requested party confirms with the documentary evidence

such provided the installation and operation of the same.

Item, in the Police Report dated 09/08/20, the acting force confirms the pre-presence of the device oriented towards the common area, although it cannot prove what if applicable, it is observed with it, requesting information from the installation company "no response to that effect."

There are several conflicts between the parties, although by judicial decision it has been decided decided that they share the same house (as a chalet) although in plan-separate rooms and there are a series of common areas, including the parking area. lie of vehicles.

The image provided by the claimed shows the operation of the camera pointing towards the parking area where a vehicle is observed, limiting-is the same as the space it occupies.

Likewise, it provides a photograph of the presence of an informative poster indicating that It is a video-monitored area, although it is not homologated to the regulations in force, lacking the indication of the "responsible for the treatment" to which in its case you can address.

In accordance with the evidence available in this proceeding sanctioning party, it is considered that the defendant has a video camera Surveillance that affects the privacy of the claimant "processing their data" without their informed consent in the home they share by court decision.

The known facts constitute an infraction, attributable to the party claimed, for violation of the content of art. 5.1 c) RGPD, by having at least us a device that affects the intimacy of the claimed party "treating their personal data nals" without just cause.

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The presence of cameras in the home is not prohibited even if the claimant

You have the right that the common areas of free transit of the house are not subject to

of recording "processing your data" and the system must adhere to what is strictly necessary.

sary for the protection of housing, weighing the rights of the parties in play

go and removing or, where appropriate, reorienting the cameras that may affect an area of

transit or free access to housing.

v

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;

In this case, when motivating the sanction, the following is taken into account:

-the nature of the infraction, since it is affecting the rights of third parties

have been intimidated by them, obtaining images of a common area of action

access to the home they share (art. 83.2 a) RGPD).

-The intentionality or negligence of the conduct, existing a "passivity" of

the one demanded when explaining what has been widely required by this or-

ganism, which qualifies the conduct as gross negligence.

In accordance with the evidence analyzed and the arguments put forward, it is considered

that the claimed party has proceeded to install a video camera system

poorly oriented surveillance towards common areas, which affect the intimacy of the

claimant, which is subject to recording at the entrances/exits of the main access

of the house.

In accordance with the above, it is considered correct to impose an encrypted sanction

in the amount of €1,500 (one thousand five hundred euros), for the alleged infringement of art. 5.1 c)

RGPD, a sanction located on the lower scale for this type of infraction.

The rest of the issues do not fall within the competence framework of this

Agency, having to resolve the "disagreements" between them in the corresponding

judicial headquarters, avoiding instrumentalizing this body in matters outside the framework

of data protection or that involves the analysis of issues more typical of

other branches of law.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria

tion of the sanctions whose existence has been proven,

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the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., with NIF ***NIF.1, for an infraction 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: NOTIFY this resolution to B.B.B..

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, 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 ES00 0000 0000 0000 0000 0000, opened in the name of the Spanish Agency
Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of
Otherwise, it will be collected during 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
tion 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

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tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

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