

□ File No.: PS/00488/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the complaining party) dated November 2,
2020 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 grounds on which the claim is based are as follows:

manifests the same:

“presence of camera(s) without signaling with an informative sign indicating that

In the case of a video-monitored area, considering that it affects the pool area without
just cause” (folio nº 1).

The claimant provides documentary evidence (photograph Annex I) that proves the
presence of informative poster, but not completed, at the access door to the complex
real estate.

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 11/25/20, 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.

On 02/15/21, this Agency received a written response indicating that it is
the main responsible for the installation of the system object of complaint, which is
composed of three chambers, the same being oriented towards “their private property”.

ass”.

“The images are subject to recording for a period of 30 days and then are subject to deletion, obeying the installation for security reasons of your property. personal piety.”

THIRD: On February 22, 2021, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim presented by the party clamant.

FOURTH: 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) tion of Data, hereinafter RGD), and in accordance with the provisions of the Title

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VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following ends:

These actions are reflected in E/02066/202.

INVESTIGATED ENTITIES

During these proceedings, the following entities have been investigated:

BBB with NIF ***NIF.1 with address at ***ADDRESS.1

RESULT OF THE INVESTIGATION ACTIONS

On 02/15/2021, the respondent sends this Agency the following information and statements in the context of file E/09644/2020:

1. That there are 3 cameras and he installed them himself.
2. That the cameras are installed inside your property for your security.
3. The images are kept for 30 days and then automatically deleted.

Provides a photograph of an informative poster on an access door where the responsible for the treatment and its contact postal address. Likewise, there is the reference to organic law 15/1999.

Provides photos from two cameras.

Provides scheme with the location of three chambers.

On 09/16/2021, the State Tax Administration Agency states that it does not has obtained data relating to the claimant with the information provided.

On 09/17/2021, the NIF of the claimed person is verified in the Cadastre.

On 10/04/2021, the respondent sends this Agency the following information and statements in the context of file E/09644/2020:

- ☐ Provides photographs from three cameras.
- ☐ Provides screen capture of the monitor where the captured images are displayed.

as by the cameras, one of them being a car park and access door and another of them the pool.

On 10/04/2021, it is verified in the url ***URL.1 that there is the possibility of reserve apartments located at ***ADDRESS.1 and includes a photograph of the pool, this being the same pool as the one shown in the photographs provided for the claimed.

FIFTH: On October 26, 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 and article 13 RGPD,

typified in Article 83.5 of the RGD.

SIXTH: On 11/23/21, a written statement of allegations was received from the party complained declaring "that the facts denounced are NOT true", adding new

mind documentary evidence (Annex I) consisting of a photograph of the access door

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where you have a non-approved sign, when referring to the regulation LO 15/1999, 13 December (LOPD).

I also attach print of a private conversation with such, without more

specifications in this regard, as well as a copy of the contract without collecting "Clausula no matter of video-surveillance cameras".

SEVENTH: On 12/01/21, a Resolution Proposal is issued in which it is proposed

a sanction encrypted in the amount of €3,000, for the accredited infraction of the articles

5.1 c) RGD and 13 RGD, by having a video surveillance camera system

disproportionately and reported irregularly.

EIGHTH: On 01/10/22, a written statement is received from the respondent

argued the following:

"There is only one main entrance to our apartment complex and there is a

clear notice on the door that there are cameras on the property. There are three cameras in a radius approximately 10m, slightly above.

The contract indicates the existence of security cameras, see paragraph 7.1. There are also posters.

The complainant had booked through Airbnb. On the offer page

Airbnb all the information is written, where it is also clearly indicated that there is cameras and where Conditions are attached.

She knew about the cameras because she was able to see the information beforehand and also at the time of check-in. I could have canceled at any time if I didn't agree.

It was our terms and conditions / house rules.

Subsidiarily to all of the above, we invoke that the clarification has always been mark it in good faith. In this sense, it should be noted that the unanimous jurisprudence has been demanding the presence of the subjective requirement of guilt, pointing out do that in the administrative illicit the subjective element of the fault must be established-ability to replace it with a strict liability or no-fault system.

It is evident in this party's opinion - and this must be said with all due respect - that no properly carried out this process, so it is appropriate to recognize the inco-correction of the process carried out by the Administration and the consequences of the pro-improperly executed termination.

Indeed, throughout our pleadings, multiple questions are articulated.

factual and legal reasons that are not subject to evaluation and about which nothing is said, incurred in a clear annulment due to lack of motivation.

Regarding the graduation of the sanction, the circumstances that are cited do not concur, since they are either non-existent and even contradictory to what is imputed, or there is a total misrepresentation of the literal tenor of the same"

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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 11/02/20 through the which the presence of a "video-surveillance system with poor orientation towards the swimming pool and transit area, without having an informative poster in this regard" (folio No. 1).

Second. It is accredited that the main responsible for the installation of the system of video-surveillance is B.B.B..

Third. The presence of an information poster is accredited, although it is not is homologated to the regulations in force, making mention of a regulation repealed LOPD (LO 15/99, December 13).

Fourth. The claimed party does not provide document(s) proving ownership exclusive to the transit area where the cameras have been installed, the cameras being insufficient Photographs provided to prove what is being captured with the camera close to the pool area.

Fifth. One of the cameras disproportionately affects the pool area, treating data of the clients of the complex affecting an area reserved for the their privacy.

Sixth. In the informative clauses of the contract that is provided, it is not reported in legal form of the presence of the cameras, only their presence is verified (Section 7 point 2), nor is it informed of the way to exercise the rights in the RGPD framework, considering the mere acceptance of the rental contract as an implicit way of consent to "treatment" in reserved areas.

"The client accepts the processing of their data to the extent that this is within the scope of the purpose of the legal relationship" (Clause No. 13 General-Vacation Rental Terms and Conditions).

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 resolve this procedure.

II

In the present case, the claim dated 11/02/20 is examined by me-
gave from which the following is transferred as the main fact:

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“presence of camera(s) without signaling with an informative sign indicating that it is a video-surveillance zone” (folio nº 1).

Along with the claim, provide documentary evidence (photograph Annex I) that proves the presence of the camera, not observing an informative poster in the vicinity, and its orientation is not clear.

The facts described initially suppose an affectation to the content of art.

13 RGPD, as it lacks an informative label indicating that it is a protected zone.

deo-guarded.

The art. 22 section 4 LOPDGDD (LO 3/2018, December 5) provides: "The duty to inform
mation provided for in article 12 of Regulation (EU) 2016/679 will be understood to comply
by placing an informative device in a place that is sufficiently visible.

ble 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 the Regulations. ment (EU) 2016/679 (...)" (*bold belongs to this body).

So that the interested party (s) can be duly informed, the poster must be as large enough so that you can easily read it from a place where all is not yet being recorded, and it must be completed in the aspects essential cough.

The poster subsequently provided by the respondent does not conform to current regulations. in force, when mentioning a repealed regulation, being the current regulation goes the RGPD, in force since May 24, 2016, being mandatory from May 25 of the year 2018 in all EU Member States.

The Spanish Agency for Data Protection has updated a video surveillance poster RGPD or information on video surveillance that until now, had been used to se- Note that an area was being recorded.

The person claimed on 11/23/21 resubmits the same poster that he had already done. had been subject to analysis by this body, adjusted to regulations currently repealed as is the LO 15/99, of December 13, being therefore insufficient the allegation put forward to undermine the proven infringement by not having a homo-compliant with the regulations in force.

In the last pleadings brief filed on 01/10/22, neither was provides objective evidence (eg photograph with date and time that proves the change of cargo) informative phone) for which the infringement of art. 13 GDPR, ha- ignoring the broad recommendations of this Agency.

III

On the part of the complainant, the alleged misguidance of some of the gangs installed by the defendant, considering that they affect the area near

pool, "processing data" without just cause.

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The defendant does not deny being responsible for the installation of the cameras, if well states that "affect their private property", the images provided confirm so the uptake of the pool area, as well as other spaces away from the purpose system security installed.

The recording of the pool area affects the right to privacy of customers. owners of the establishment that are affected by the devices in a zone of free recreation, only being allowed to capture the access area to the same ma,

Article 5.1 c) RGPD provides: "Personal data will be:

a) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

The facts exposed, according to the allegations put forward, suppose a affectation of art. 5.1 c) RGPD, as the installed cameras are poorly oriented, affecting- do to areas destined for the free recreation of the clients of the same.

The allegations in relation to the facts described reproduce those already made

It was created in a previous phase, without providing a screen print (date and time) of what is captured with the camera, nor does it prove ownership of the private area, more beyond a schematic of the presumed orientation of the camera(s).

In relation to the presence of cameras oriented towards the pool area, the fact that it reports the presence of the cameras at the entrance to the premises is not legitimate.

ma that they permanently record the entire venue, as it is a space intended for the freedom of recreation of the clients, who enjoy in their case of a well-deserved rest, considering disproportionate a capture of the entire area, beyond a mere control of access to the site.

In the documentation provided (Copy Terms and Conditions for Rental Vacation Apartment) you are only informed of point 7.2 "Security cameras outside" not being the same a clause that legitimizes the "treatment" of the data that claims the claim in free recreation areas, without the argument being shouted in the new allegations dated 01/10/22 that affects the mere information tion to the clients of the chambers can be considered as a clause adjusted to the data protection regulations.

The respondent cannot claim that what he argues as "Rules of the House" is an imposition on the free consent of the guests (clients) of the facilities that it runs, sufficing the mere signature or information to them, as document legitimizing their data in areas reserved for the most strict strict privacy of these.

Consequently, the presence of camera(s) facing the pool area access to them must be strictly limited, and the premises must be free of interference (s) of this type of device, allowing the free spread of the clients (as) in said area, being sufficient with the mere information of the use of the same in the informative clauses of the tourist rental contract.

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In the contractual document that, if applicable, informs the clients, it must be incorporate a specific "Video-surveillance" clause, and must have formulas river (s) of exercise of rights on the same web page or at least informed of the easy way to get it.

IV

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 data subjects under articles 12 to 22

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 an area of a reserved for privacy, such as the pool area (art. 83.2 a) RGPD).

-The intentionality or negligence of the conduct, by widely capturing the reserved (eg pool area), without just cause, with the logical inconvenience clients (as), (art. 83.2 b) RGPD), which denotes "seriousness" in the conduct described, that does not meet the minimum criteria required in terms of data protection.

According to the evidence available at the present time of the sanctioning procedure, it is considered that the claimed party has a video-surveillance camera system poorly oriented towards reserved areas, not

being the same duly signposted in the terms required by the regulations in force.

The known facts are therefore constitutive of a double infringement, im-attributable to the claimed party, for violation of articles 13 RGPD and 5.1 c) RGPD, in relation to obtaining data from common areas (eg pool area).

In accordance with the above, it is considered correct to impose an encrypted sanction in the amount of €3,000 (Three thousand euros), for the infringement of art. 13 RGPD (1000€), as well such as having the cameras poorly oriented, observing the pool area, affecting to the right of third parties without just cause, being affected the art. 5.1 c) GDPR (€2,000); penalty located on the lower scale for this type of offence.

v

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) it is established that each control authority may “order the person in charge or of the treatment that the treatment operations comply with the provisions

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of this Regulation, where appropriate, in a certain way and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR

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)

and 13 of the RGPD, typified in Article 83.5 a) and b) of the RGPD, a fine of €3,000

(Three Thousand Euros).

SECOND: ORDER in accordance with article 58.2 d) RGPD, so that in the period of ONE MONTH from the day following the notification of this act, if appropriate to prove compliance with the following measures:

- Replacement of the informative poster(s) being adapted to the current one regulations in force (GDPR).
- Reorientation and/or removal of the pool chamber, providing an impression of screen (eg date and time before and after) that allows verifying the changes made tuados.
- Accreditation of availability of informative form(s) available to the customers of the establishment.
- Inclusion of the "Video-surveillance" clause in the review of the information to be submit on the website to future clients of the tourist apartment complex cos.

THIRD: NOTIFY this resolution to the party claimed B.B.B..

FOURTH: 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 Code 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.

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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.

Sea Spain Marti

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