

□ File No.: EXP202105078

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (*hereinafter, the complaining party) dated November 28,
2021 filed a claim with the Spanish Data Protection Agency. the re-
outcry is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party).

The grounds on which the claim is based are as follows:

“presence of a camera in a tree badly oriented towards the transit area”

considering that it intimidates him, affecting his core rights (folio No. 1).

Together with the notification, documentary evidence is provided that proves the presence of a
camera in a tree (Evidence Doc. No. 1).

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 11/29/21 and 01/04/22, to proceed to 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.

No response has been received to this transfer letter, nor has any explanation been provided.
duced to date.

THIRD: On 02/02/22, in accordance with article 65 of the LOPDGDD,
the claim filed by the claimant was admitted for processing by
this organism.

FOURTH: On March 21, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 5.1.c) of the RGD, typified in Article 83.5 of the GDPR.

FIFTH: On 01/20/22 new arguments are received from the claimant, stating in essence the following:

"I sent a complaint regarding a camera installed in a tree of the pro-located in ***URBANIZACIÓN.1 since this individual controls the neighborhood and has been involved in various robberies, and I have seen that in response to this fact they have sent him a letter to that address. I told them that it is (...), that it does not work in anything legal (there is 1 investigation opened by the civil guard on alleged drug trafficking) in addition to other shady deals. Do you think it was convenient to send him a notification

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to that dwelling, when his habitual residence is not that (he does not reside there, he only uses the sale for their shady dealings)? And do you think this individual is going to abide by what you you deem appropriate? I tell them that he is a problematic and conflictive person who thinks he has the same or more right to do what he wants (...) and therefore that fact he says it's his (he said it before a judge when he ran me over at the door from my house and assaulted my mother). I think it's not the right way to proceed without-truly (...)".

SIXTH: The database of this agency has been consulted and there has been no response. no clarification has been produced for the appropriate legal purposes, after the the notification of the Agreement to Start this procedure (BOE 04/06/22).

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

First. The facts bring cause of the claim dated 11/28/21 through the

which translates as the main fact the following:

“presence of a camera in a tree badly oriented towards the transit area”

considering that it intimidates him, affecting his core rights (folio No. 1).

Together with the notification, documentary evidence is provided that proves the presence

from a camera in a tree (Evidence Doc. No. 1).

Second. He is accredited as the main person responsible for the installation of the camera

B.B.B.

Third. The presence of a video-surveillance device oriented

blatantly into public space, without just cause.

Fourth. There is no evidence of the presence of an informative poster indicating that it is a

video-monitored area, indicating the person responsible for the treatment or the form of exercise

cite the rights within the framework of current regulations on data protection.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-

General Data Protection Regulation, hereinafter RGPD), grants each authori-

control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

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Likewise, article 63.2 of the LOPDGDD determines that: "The formal procedures
ted by the Spanish Agency for Data Protection will be governed by the provisions of
Regulation (EU) 2016/679, in this organic law, by the regulatory provisions
dictated in its development and, as long as they do not contradict them, with a sub-
sidiario, by the general rules on administrative procedures."

II

Before going into the substance of the matter, remember that in the Initiation Agreement of the pre-
present procedure it was mentioned that, in the case of not making any allegation to the
itself, this could be considered a "resolution proposal".

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the proceeding- established

that if allegations are not made within the stipulated period on the content of the agreement,

initiation document, when it contains a precise statement about the response

imputed responsibility, may be considered a resolution proposal. In the present

In this case, the agreement to initiate the sanctioning file determined the facts in which

that the imputation was specified, the infraction of the RGPD attributed to the claimed one and the

sanction that could be imposed. Therefore, taking into consideration that the claimant

mada has not formulated allegations to the agreement of beginning of the file and in attention to

established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered

in the present case proposed resolution.

III

In the present case, the claim dated 11/28/21 is examined by me-

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

“presence of a camera in a tree poorly oriented towards the transit area” (fo-
mess no. 1).

The art. 5.1 c) RGD 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 zo-
nas of 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.

The purpose of this type of device must be the security of the property and of its inhabitants, avoiding the affectation of the rights of third parties who are intimidated two with the same

IV

In accordance with the evidence available in this proceeding, to sanction, it is considered that the claimed party has a device (video-surveillance camera) installed on a tree with palmaria bad orientation without just cause.

The evidence provided makes it possible to verify the presence of a device camouflaged in the top of a palm tree with bad orientation and without proper signaling, at least in an apparent way, in a visible area or without informing about the "operational" or not of the same against third parties.

The known facts constitute an infraction, attributable to the party claimed, for violation of the content of art. 5.1 c) RGPD, previously transcribed.

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 (...)"

According to the above, it is considered correct to impose a penalty of €300,

by having a device whose nature has not been clarified, visible from the outside, affecting the right of third parties that pass through the area, although it takes into account the lack of initial explanations after the transfer of this Agency, as well as being a natural person with "little" knowledge in the matter at hand, sanction located on the lower scale for this type of behavior.

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Installing the camera on a tree with a bad orientation palm makes the behavior described be considered at least <serious> negligence, given that it is aware of the intimidation that the device generates in third parties that transit or have in the area in question.

v

It is noted that not meeting the requirements of this body may be considered classified as an administrative offense in accordance with the provisions of the RGPD, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

Analyzed as a whole the arguments of the claimant party, the rest of questions (vgr. occupation of the dwelling, etc.) must be transferred, where appropriate, to the Security Forces and Bodies of the locality or, where appropriate, to the Court of Ins-construction closest to the scene of the events, which hold the powers to enter your case to assess them.

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 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 €300 (three hundred euros).

ros).

SECOND: NOTIFY this resolution to the party claimed 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.

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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.

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