

938-0419

Procedure No.: PS/00153/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Don A.A.A. (hereinafter, the claimant) dated November 21,
2018 filed a claim with the Spanish Agency for Data Protection,
motivated by the processing of data carried out through cameras of a security system.
video surveillance whose owner is B.B.B. with NIF *** DNI.1 (hereinafter the claimed)
installed at ***ADDRESS.1.

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

“The defendants have a camera system installed, from which
capture and store the images of those who pass through the maneuvering areas of the
mentioned local, as well as those of other parking spaces and also of the accesses to
the storage rooms (...)”—folio nº 1--.

It was accompanied in its day by a CD-Rom and now also as Document No. 5 a
photographic and video report to check the scope of the cameras
installed, on the accompanying DVD.

“Furthermore, we once again show that the defendant also fails to comply with
the regulatory regulations insofar as it does NOT have the forms that it must have at
disposal of the interested parties and required by art. 5.1 LOPD.

...new events have occurred that lead this part to have to
file a new Complaint whenever the accused have been doing
ostentation that their cameras capture and record common areas and spaces (...)

which means that the defendant is viewing the cameras from his home and making other users notice that he is watching them since he activates the lights or the locks of your vehicle from your home to the passage of the users of the garages.

In addition, the Community of owners has arranged another video-surveillance in the premises intended for Garages, which makes it unnecessary for the defendants have their own.

Thus, currently none of the circumstances that

They took the AEPD to the File of the Complaint made at the time (...)

In June of this same year, they were sent a Burofax giving them a term of 7 days to dismantle the installation, letting the notice expire in the Office of mail, which forced the Administrator to make this communication through the

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insertion of the communication on the notice board of the building during the term legally provided, in addition to leaving the notification in your mailbox. (...)

These recordings cause a serious risk for the now Complainant, since it enables the accused to know exactly when they are leaving holidays or when he returns, when he accesses the Garage (...) in addition to recording images of minors and their children. There is no security document and it is due to the scope of the recordings, the rights of the complainants (...)."

SECOND: In view of the reported facts, in accordance with the evidence that is available, the Data Inspection of this Spanish Agency for the Protection of

Data considers that the treatment of personal data that is carried out by the denounced through the chambers to which the complaint refers, does not meet the conditions imposed by the regulations on data protection, for which reason the opening of this sanctioning procedure.

THIRD: After consulting the database of this Agency, it is associated with the denounced the procedure with reference number A/00245/2016, where proceeded to FILE the complaint, after verifying the administrative infraction of the denounced, as it is not proceeding to require any measure in the matter.

FOURTH: On April 8, 2019, 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 of the RGPD, typified in Article 83.5 of the RGPD.

FIFTH: On 04/29/19, this Agency received a written statement of allegations from the legal representative of the defendant stating that the "cameras have not been modified" in relation to the previous procedure (already analyzed by this body), fulfilling the same function of protecting the movable property of the reported (vehicles) that are vandalized by neighbors of the property or third parties unrelated to it, due to clashes of various kinds.

Along with the allegations, it provides the following documentary:

- Challenge Owners Meeting Agreement.
- Copy of the challenge claim before the competent Court due to the matter.
- Copy Complaint for theft in a van of your property.
- Copy of Order issued on 04/08/19 agreeing to decree the SUSPENSION precautionary of the execution of the Agreement of the Board of the Community of owners of ***ADDRESS.1 Garages.

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

In this proceeding, the following are considered proven facts:

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FACTS

FIRST: On 11/21/18, a written document is received from the party complainant essentially transferring the "installation of several cameras" in the area of parking lot of his home, which he asserts affect his privacy by obtaining data individuals and their families without just cause.

SECOND: It is accredited that the person responsible for installing the cameras is the neighbor of the building Don B.B.B., who does not deny being responsible for the facility.

THIRD: The reasons for the installation of the cameras in question are due to that the defendant is the owner of three parking spaces, whose vehicles have been subject to acts of vandalism and/or theft with force on things.

Such an end is credited:

-Copy Local Police Complaint (Ubeda) for theft of related objects from inside the vehicle.

-Copy of Local Police Complaint (Ubeda) for damage to your vehicle by neighbor of the property.

-Copy of Final Judgment with No. XXX/2015 of the Criminal Court No. 4 (Aranjuez) convicting a neighbor of the property for an accredited Crime of damages (art. 263 CP).

FOURTH: The images provided do not prove capture of common spaces, being the same directed towards the private space of your parking area.

FIFTH: There is no proof that images of minors have been obtained, having been transferred at all times the images to the Authority acting.

SIXTH: There is no copy provided of the Minutes of the Owners' Meeting, although the
The same has been challenged by the accused party (Proof document
nº 4) having agreed the head of the Court of First Instance and Instruction nº1
(Ubeda) decree the precautionary suspension of the Agreement of the Board of the Community of
Owners of Garages of the ***ADDRESS.1.

SEVENTH: The denounced system was already analyzed by this Agency in a
prior complaint associated with the procedure with reference number A/00245/2016,
where the essential aspects in the framework of data protection have already been reported.

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FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of
control, and as established in art. 47 of the Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection
is competent to initiate and resolve this procedure.

II

In the present case, we proceed to examine the claim of date of entry into
this body (11/21/18) by means of which it transfers as main “fact”:
“The defendants have a camera system installed, from which
capture and store the images of those who pass through the maneuvering areas of the
mentioned local, as well as those of other parking spaces and also of the accesses to
the storage rooms (...)”—folio nº 1--.

In essence, it denounces the installation of a video-surveillance system in the vehicle parking area of the building, with presumed orientation towards areas common.

The accused party does not deny the facts, claiming to be responsible for the installation, although it justifies the measure based on different acts of vandalism in the vehicles owned by you.

Attach a copy of the Complaint before the Security Forces and Bodies (doc. evidence No. 2) that proves theft in his work van, as well as a copy of Final judgment with No. XXX/2015 of the Criminal Court No. 4 (Aranjuez) convicting to a neighbor of the property for an accredited Crime of damages (art. 263 CP).

The documentary evidence provided justifies the proportionality of the measure adopted by the defendant, since the captured images served to prove the authorship and responsibility for the damage produced in your vehicle.

This body has pronounced itself in various resolutions on its rejection towards acts of vandalism, whatever their type (e.g. graffiti, damage to vehicles, spills of fluids, graffiti on facades, etc), which are carried out in a surreptitiously taking advantage of the difficulty of proving the behaviors described.

The video-surveillance cameras play a dissuasive function of anyone "friend" of what is foreign or to perform uncivil conduct for mere fun or wickedness, being able to provide the images (videographic evidence) to the Court of Instruction more close to the scene of the events or make themselves available to the Security Forces and Corps. State Security.

The accused party provides photographic evidence of what is observed with the installed cameras, being the same oriented exclusively towards the area of

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the parking spaces of your property, showing a collaborative attitude with

this Agency at all times.

The complainant states that his parking space is recorded, although he does not provide any evidence that proves what has been asserted, to then carry out a series of "speculations" about the cameras in question, that the only thing they denote is some type of "quarrel" with the defendant.

She states that her children are being recorded, although the cameras are oriented towards the parking spaces of the defendant, being away from the of the complainant, so that only in the case of approximation to the squares of this can get pictures.

This Complaint should have been made by the President of the community of neighbors (which is the wife of the complainant) providing the necessary documentation on the subject to be examined by this body.

Notwithstanding the foregoing, it is not necessary to have the consent of the Board of owners, if the defendant suffers acts of vandalism in their vehicles or sneak attacks with no logical explanation, such as the one that led to the sentence aforementioned sentence.

The complainant wields a revocation of the authorization of the Board of owners, as well as the fact that it is a disproportionate measure since the Community of owners, declares that it has its "own video-vigilance", although he forgets to mention that the Minutes of the Owners' Meeting have been subject to challenge by the defendant apart from "irregularities" by suppose a situation of vulnerability to it.

The installed system leaves the parking spaces of the denounced, so that there would be a risk of suffering attacks again Vandalism on vehicles owned by them.

In cases such as the one before us, this body has already established that

a restrictive interpretation of the norm cannot suppose a situation of helplessness of the victim, so that it returns to the situation of attacks vandals on their vehicles.

The installed cameras have proven their effectiveness, as the images of the They have served as support for a conviction of a neighbor of the property, which according to proven facts proceeded "to repeatedly kick the doors of the Citroen C4 owned by the accused" while he was parked in his parking place.

The principle of proportionality, referenced in the RGPD in section 1.c of article 5, -and to whose content the norm also refers as "minimization of data"-, as we can see, it was already part of our legal system with prior, but this prior existence should not lead us to disdain the importance of this principle that not only limits the processing of data not only in the sense of adapt it to specific purposes but also imposes the need to adopt

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the technical and organizational measures aimed at minimizing data processing personal.

The documentary evidence provided by the complainant, consisting of the revocation of the permit for one of the squares adjacent to the one denounced by the neighbor holder of the adjoining square, must be dismissed as unnecessary, given that the Installed cameras can capture a minimal portion of the adjoining plaza(s), as occurs in the case of damage to the vehicle caused by poor opening of the doors of the neighboring vehicle.

III

In accordance with the foregoing, after analyzing the allegations and evidence provided, considers that the denounced system complies with the principle of proportionality established by our jurisprudence (vgr. STC 186/2000), considering this organism that the cameras must remain installed in the place where they are, without that bad faith is seen in the accused when keeping them installed.

It is necessary to remember that this is the second time that this organism examines the system in question, reminding the parties that this should not be instrumentalized body for "neighborhood quarrels", having to act as on the other hand it has to presuppose in accordance with the minimum rules of good neighborliness, reaching friendly solutions that satisfy all parties in the corresponding Meetings of neighbors.

So that there is no doubt, except that the squares of parking lot of the defendant are fully protected through the system of cameras installed by the Board of Owners, they will remain in their current location, not having to raise the issue again with this Agency, which It is brought to your attention for the appropriate legal purposes.

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: PROCEED to decree the FILE of this procedure by not the commission of any administrative infraction must be accredited.

SECOND: NOTIFY this resolution to Don B.B.B. and report the result of this procedure to the denouncing party Mr. A.A.A..

In accordance with the provisions of article 50 of the LOPDPGDD, 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 LOPDPGDD, 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 month from

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counting 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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