

□ Procedure No.: PS/00164/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: On January 28, 2020, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter referred to as the claimant),
through which he makes a claim against B.B.B. with NIF ***NIF.1 (hereinafter, the
claimed), for the installation of a video surveillance system installed in
*** ADDRESS.1, there being indications of a possible breach of the provisions of
data protection regulations.

The grounds that support the claim are the witness statement of the
claimed made on January 7, 2020 in the Court of First Instance and
Instruction No. 1 of Tortosa within a judicial proceeding. the one who recognizes the
placement of a video surveillance camera that focuses on public roads and their
property, without information sign.

Provide the aforementioned witness statement.

SECOND: Prior to admitting this claim for processing, the
Subdirector General for Data Inspection sent a request for information to the
claimed in which it is communicated that the Data Protection Agency has had
knowledge of the existence of video surveillance cameras located at the address
indicated in the first antecedent that could be violating the regulations of
data protection and in which you are asked to certify the conformity of the
mentioned facility with the regulations responding to a series of questions.

The respondent filed a response brief on April 29, 2020 in which

states the following:

“[...] The capturing of images was limited solely and exclusively to the interior of the premises of my home to be used as evidence of determinative charge in a criminal proceedings for crime and damages [...]

Since the capturing of images was limited exclusively to the interior of the housing compound without capturing images of the public thoroughfare, except for a strip minimum access to housing, it is lawful to consider that it was carried out in the exercise of a personal or domestic activity, to which the regulations of Data Protection [...]

Since I consider that the data protection regulations are not applicable data, there is no informative poster that it is a video-monitored area [...]

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The range of the camera [...] varies between 5 and 20 meters and it was installed in one of the supports of the porch of the house. [...] Your space of collection was limited so as not to affect adjoining land and homes, public roads or any other alien or reserved space.”

Attach the following documents.

- ☐ Doc.1. Invoice of purchase of the camera installed in the name of the claimed.
- ☐ Doc.2. Photograph of the protective box.
- ☐ Doc. 3. Photograph of the technical specifications.
- ☐ Docs. 4, 5 and 6. Photographs of the location of the camera on the entrance porch to the house taken from three distances.

□ Doc. 7: Image of the recording field of the camera taken on June 23, 2019

at 00:16 hours.

□ Doc. 8: Copy of the statement given before the Mossos d'Esquadra of Tortosa on December 27, 2019.

□ Doc. 9: Judicial ruling of January 7, 2020 issued by the Court of First Instance and Instruction No. 1 of Tortosa.

THIRD: The claim was admitted for processing by resolution of June 1 of 2020.

FOURTH: On November 16, 2020, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of Article 5.1.c) of the RGPD, Article 13 of the RGPD, typified in the Article 83.5 of the RGPD.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a brief of allegations on December 18, 2020, in which it stated that:

"[...] Preliminary question.-

Although I do not consider myself responsible for any violation, I proceeded to withdraw the camera the same day I received the request for information from this AEPD.

First.- It has never been my intention to infringe the regulations on protection of data but to prove with sufficient evidence of the crime of harassment and damages [...] and thereby justify the complaint in a criminal proceeding [...]

[...] I still consider that the capturing of images was exclusively limited inside the housing compound without capturing disproportionate images of the road except for a minimum strip of access to housing and to discover and report a crime. That is why I considered and continue to consider that the facts

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of this procedure does not apply the protection regulations of data. Second.- The Legal Office of this AEPD resolved a query raised in an analogously similar matter and attached as DOC. 1, in the analyzed the necessary weighting between the right of an interested party to obtain have data that would allow him to exercise legal actions and the right of another interested party to the protection of personal data. [...]

I sincerely believe that I have proven that the purpose pursued by me by installing video surveillance camera was to exercise a legal claim for responsibility derived from illicit acts, for which it was necessary to know the identity identity of the person responsible for them, for the purpose of directing against it the corresponding complaint, as I did, in compliance with an im-set by art. 277 LECrim and protected by art. 6.1.c) of the RGPD when establishing as a course that legitimizes the processing of personal data to comply with a obligation applicable to the data controller. [...]

Therefore, my action would not only be protected by the protection legislation tion of data, but it would be imposed by procedural legislation [...]

Third.- Following that same previous query, my action due to the existence of a legitimate interest as a legitimizing cause for the data processing, according to art. 6.1.f) of the RGPD. In the case that concerns me, giving the necessary weighting required according to the specific circumstances that produced in it, my interest in accessing the data of the person who harasses me- and damaged my property to later denounce it and obtain a guilty verdict.

should prevail over the right to data protection of the person concerned.

no problem.

Fourth.- Furthermore, the legitimate interest invoked by me refers

especially the fundamental right to effective judicial protection (art. 24 CE), in the

extent to which the recorded images were used for obtaining evidence to

file a criminal complaint. [...] In this way, having made the necessary

required consideration and taking into account the specific circumstances that occur in the

In this case, my interest in accessing certain images must prevail

on the right to data protection of the affected natural person.

Fifth.- Finally, accredited the limitation and minimization of communication

of data, it is only necessary to analyze the necessary weighting between my rights to obtain

data that allowed me to exercise legal actions and the right of the interested party to

the protection of your personal data (...)”

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 01/28/20 through the

which is transferred as the main fact the following “camera presence” oriented towards

public space, having carried out third-party “data processing” without cause

justified.

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The claimant provides documentary evidence (Doc. No. 1) in the Court of First

Instance and Instruction No. 1 of Tortosa.

Second. It is identified as the main person in charge Mr. B.B.B., who acknowledges have the cameras installed.

Third. There is evidence of excessive capture of public space, affecting the right of third parties, an aspect that is recognized by the claimant himself.

Fourth. It is accredited that there was no approved information poster in the area visible indicating that it was a video-monitored area.

Fifth. It is proven that the images were used in court to prove the authorship of a crime of property damage (art. 263 CP).

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation-General Data Protection Regulation, hereinafter RGPD), recognizes each Authority-Control Authority, 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), the Director of the Spanish Agency Data Protection is competent to initiate and resolve this procedure.

II

The physical image of a person, in accordance with article 4.1 of the RGPD, 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.

III

The facts bring cause of the claim dated 01/28/20 by which

transfers the following to this Agency: "placement of a video-surveillance camera towards public space" (folio nº 1).

The art. 5.1 c) RGPD provides the following: Personal data will be: "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

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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, 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 zones of transit of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either, as this is the exclusive competence of the State Security Forces and Bodies.

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 intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install imaging devices

of public space, outside the cases allowed in the regulations.

IV

In accordance with the evidence available in this proceeding

punisher, it is considered that the defendant proceeded to install a camera system

areas, which was oriented towards public space affecting transit areas of land

zeros, without having an approved poster for the appropriate legal purposes.

In this case, it is appropriate to reject the allegation of "private" area affecting space

public, which is why he should have placed an informative poster in a visible area ad-

pouring about it.

This Agency has expressed itself in various resolutions about its rejection of acts

vandals, whatever their nature, being aware of the furtive nature of

the attacks that are carried out protected by the belief of a certain impunity as they are

carried out surreptitiously.

The foregoing, however, does not justify a lack of knowledge of the current legality in the

installation of video-surveillance cameras, the installation being perfectly compatible

felling of the same with the placement of an informative poster informing that

It was a video-monitored area.

Therefore, this body considers the infringement of article

13 RGPD, since the corresponding informative poster should have been installed for the purposes

timely legal cough

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The claim is based on the presumed illegality of the installation by the claimed of a video surveillance system, consisting of a camera located on the porch of the home of the property located at ***ADDRESS.1, which could capture images of public areas disproportionately.

As proof of these statements, the claimant provided the evidence indicated- given in the "Facts" section, first point, of this agreement.

The image of people is protected, especially with respect to the misuse that it can be done through the use of certain possibilities offered by some nas technologies that capture or treat the image.

The defendant proceeded in this case to transfer the images (personal data) to the corresponding Investigating Court in order to prove the alleged commission of a crime of property damage (article 263 CP).

The purpose pursued in the criminal process with the evidentiary activity is "to form the intimate conviction of the Court about the existence or not of the punishable act and the participation of the author, with all its circumstances, just as it happened in reality. historical reality prior to the process".

If instead of a fixed camera, it had been a "hidden" camera, it would be, The measure was equally justified given that what it was intended to avoid was damage done. two furtively to his private property, using the images obtained to prove the authorship of the filmed events. "the filming of scenes allegedly criminal activities that take place in public spaces or thoroughfares is legitimate and does not violate the rights fundamental rights (...)"-(AP Coruña Judgment of February 17, 2015)--.

In this way, it is admitted that video footage can be provided as evidence provided that spaces reserved for people are not invaded.

SAW

In accordance with the evidence available in this proceeding, penalty, it is considered that the exposed facts do not comply with what is established in articles 5.1.c) and 13 of the RGPD, for what they could suppose the commission of paths offenses typified in article 83.5 of the RGPD, which provides the following:

“The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, treating- of a company, of an amount equivalent to a maximum of 4% of the volume of Total annual global business of the previous financial year, opting for the one with the highest amount:

- a) the basic principles for the treatment, including the conditions for the consent lien pursuant to articles 5, 6, 7 and 9;
- b) the rights of the interested parties according to articles 12 to 22; [...]».

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For the purposes of the limitation period for infractions, article 72.1 of the LO-PDGDD, which establishes that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679, it is con-

They are considered very serious and the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following following:

- a) The processing of personal data violating the principles and guarantees established two in article 5 of Regulation (EU) 2016/679. [...]
- h) The omission of the duty to inform the affected party about the processing of their data

personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679 and 12 of this organic law.”

7th

The corrective powers available to the Spanish Data Protection Agency

These, as a control authority, are established in article 58.2 of the RGPD. Among them

are the power to issue a warning -article 58.2 b)-, the power to

impose an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-,

or the power to order the person in charge or in charge of the treatment that the operations

ns of treatment comply with the provisions of the RGPD, where appropriate, of a

certain manner and within a specified period -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of an administrative fine.

treat.

Without prejudice to the provisions of article 83, the aforementioned GDPR provides for the possibility of

punish with a warning, in relation to what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than a sanction.

tion by means of a fine, a warning may be imposed. must, however, lend

special attention to the nature, seriousness and duration of the infringement, its character

intentional, to the measures taken to alleviate the damages suffered, to the degree

liability or any relevant prior violation, to the manner in which the authority

control authority has become aware of the infraction, compliance with measures

measures ordered against the person in charge or in charge, adherence to codes of con-

conduct and any other aggravating or mitigating circumstance.”

viii

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.

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to a maximum of 4% of the total global annual turnover of the financial year

above, opting for the highest amount:

b) the rights of the interested parties according to articles 12 to 22;

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation

with what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than a sanction

A warning may be imposed by means of a fine.

However, special attention should be paid to the nature, severity and duration of

the infraction, its intentional nature, the measures taken to alleviate the damage and

damages suffered, the degree of responsibility or any previous infraction pertaining to

specifically, to the way in which the supervisory authority became aware of the infraction.

tion, to the fulfillment of measures ordered against the person in charge or in charge, to the

adherence to codes of conduct and any other aggravating or mitigating circumstance

tea.”

This body takes into account the nature of the sneak attacks suffered by

claimed, as well as that the capture of public area was minimal, to consider

that the sanction to be imposed given the active collaboration with this Agency, is not another

than a Warning, since it should have taken the precaution of signaling that the area was being video-monitored, thereby also fulfilling its objective.

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

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS a warning to Don B.B.B., with NIF ***NIF.1, for an infraction of Article 5.1.c) of the RGPD, Article 13 of the RGPD, typified in Article 83.5 of the GDPR.

SECOND: NOTIFY this resolution to B.B.B. and REPORT the result of performances to A.A.A..

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

resorts 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-

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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.

Sea Spain Marti

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