

□ Procedure No.: PS/00424/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: The complainants Mrs. A.A.A. and Mrs. B.B.B. dated December 12
of 2019 filed claim(s) with the Spanish Agency for the Protection of
Data. The claim(s) is directed against whom they identify as C.C.C. with NIF
***NIF.1 (hereinafter, the claimed one). The grounds on which the claim is based are
following:

“recording images of neighbors without removing the device, far from it
having redirected it to a private area” (folio nº 1).

Along with the claim, provide documentary evidence that proves the presence of the
denouncing device (Photographs No. 1 -2).

SECOND: As a consequence of the actions carried out by the Spanish Agency
After receipt of the claim, the Data Protection Procedure was processed.
sanctioning proceeding PS/00022/2020, which was resolved with filing in application of the principle
principle of presumption of innocence. The resolution was notified to the respondent, on the date
October 23, 2020.

THIRD. On 11/13/20 this Agency received -Official-- sent by the
Civil Guard (Comandancia ***LOCALIDAD.1) confirming the presence of the device
vo on the road to which number 74 (property of the accused) can be accessed, as well
as in number 89 linked to one of the complainants.
-There are two motion detection devices installed with the possibility
to get frames in real time.

-There is an information poster stating that it is a video-monitored place with alarm system and notification to the Police.

“There are neighborhood conflicts, as well as a civil dispute, for which the claimant states that the video-monitored area is a public area, a road of passage or easement, contrary to the claim that says it is a private area and of your property”

“It means that in view of these Judgments the defendant has installed a chamber video-surveillance gangs on a road of easement of property but public, since the use of the same by the owners of the properties is recognized. surrounding it, not being therefore a private property”.

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Annexes.

-Annex I. Copy of the Complaint filed by the respondent, where it contributes images of the recordings of the video-surveillance cameras.

-Annex II. Printed copy of the Cadastre registry, where it is observed that the place gar video-monitored by cameras it is a road for public use.

-Annex III. Copy of two Judgments in which the use of the car I use two of the neighbors as servants.

FOURTH: On November 27, 2020, 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.

FIFTH: The database of this Agency consulted on 05/10/21 has not been made any allegation in this regard by the defendant.

SIXTH: On 05/18/21, a "Resolution Proposal" is issued, in which it is proposed a fine of €3,000, for the installation of a camera system oriented towards transit area, affecting the content of art. 5.1 c) RGPD, without just cause.

SEVENTH: When the database of this AEPD was consulted on 06/29/21, no received any response in this regard.

EIGHTH

process.

: Attached as an annex is a list of documents in the

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 12/12/19 that transferred at the time the following:

"recording images of neighbors without removing the device, far from it having redirected it to a private area" (folio nº 1).

Along with the claim, provide documentary evidence that proves the presence of the denouncing device (Photographs No. 1 -2).

Second. The resident of the town is identified as the main responsible identified as C.C.C.

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Third. There is evidence of the presence of two recording devices towards the zone of public transit without just cause, such end being corroborated by Official Letter of the Civil Guard dated 11/13/20.

Fourth. There are various conflicts between the parties, without the land being owned exclusive, thereby affecting the right to the image of other residents of the locality.
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Fifth. No additional allegation has been made by the respondent regarding the reason(s) for the presence of the cameras, as well as the affectation of a transit zone without cause justified.

Sixth. There is a previous procedure associated with the claimant with number PS/00170/19 in where the following was agreed:

“WARN (PS/00170/2019) Mr. C.C.C. for infringement of the content of the art. 5.1 c) RGPD, by having a video-surveillance device oriented towards public area, offense typified in article 83. 5 a) RGPD, being punishable by in accordance with art. 58.2 GDPR”

FOUNDATIONS OF LAW

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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, we proceed to examine the claim dated 12/12/2019 by through which the presence of an image capturing device(s) is transferred

in a transit area without just cause, affecting the right to denounce

cients.

Through OFFICIAL OFFICE dated 11/03/20 the Civil Guard (Comandancia ***LOCA-

LIDAD.1) confirms the presence of the device on the path that can be accessed

number 74 (property of the defendant), as well as number 89 linked to a

of the complainants.

The facts therefore materialize in the presence of two devices oriented

two towards a transit area where third parties legally access, being

the same arranged in an intimidating manner, affecting freedom of movement

of them, treating their data in an unjustified manner.

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").

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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.

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

III

In accordance with the evidence provided that is available in the present
sanctioning procedure, it is considered that the defendant has a device
(s) of recording oriented towards a transit area affecting the right of third parties
without justified cause.

The art. 77 section 5 of Law 39/2015 (October 1) provides the following: "The
documents formalized by the officials who are recognized as
authority and in which, observing the corresponding legal requirements, it is recognized
jan the facts verified by those will prove them unless it is accredited
otherwise".

The Civil Guard dispatched to the scene of the events confirms the presence "of
two devices with real-time imaging" (Official letter dated 11/03/20).

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

IV

The art. 83.5 RGD 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:

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a)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

When motivating the sanction, the following is taken into account:

- the nature, seriousness and duration of the offence, taking into account the nature

nature, scope or purpose of the treatment operation in question, as well as

the number of interested parties affected and the level of damages suffered

fried; (art. 83.2 a) RGPD).

- the intent or negligence in the infringement; (art. 83.2 b) RGPD).

- any previous infringement committed by the person in charge or the person in charge of the treatment-

(art. 83.2 e) RGPD).

According to the above, it is agreed to impose a sanction encrypted in the amount of

€3,000 (Three Thousand Euros), given the orientation of the camera, as well as the presumed

absence of authorization for the placement of the same, as well as for the fact of being

previously warned by this Agency, an infraction located on the lower scale for

this type of behavior.

All of this without prejudice to reorienting or accrediting the legality of the chamber(s) in

issue, accrediting such end before this Agency (eg photography with the before and after then, etc), notwithstanding the use of the arguments it deems necessary.

In view of the foregoing, the following is issued

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 C.C.C., with NIF ***NIF.1, for an infraction of Article 5.1.c)

of the RGPD, typified in Article 83.5 a) of the RGPD, a fine of €3,000 (three thousand Euros). ros).

SECOND: ORDER the respondent so that within the non-extendable period of ONE

MES proceeds to withdraw the cameras or reorient them in such a way so that images of the transit area are not obtained.

THIRD: NOTIFY this resolution to C.C.C. and REPORT the result of the proceedings to the claimants Mrs. A.A.A. and Mrs. 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 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,

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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 between the 16th and last day of each month, both inclusive, the payment term It will be 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 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. Of being 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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Director of the Spanish Data Protection Agency

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