

□ Procedure No.: PS/00431/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: D. G. OF THE CIVIL GUARD - MAIN POST OF JEREZ DE LA

FRONTERA (hereinafter, the claimant) on October 18, 2019 filed

claim before the Spanish Data Protection Agency. The claim is

directed against A.A.A. with NIF ***NIF.1 (hereinafter, the claimed one).

The reasons on which the claim is based are "installation of a video camera-
surveillance" aimed at public space without just cause.

SECOND: In view of the facts denounced in the claim and the documents
data provided by the claimant, the Subdirector General for Data Inspection pro-
vided to carry out preliminary investigation actions for the clarification

of the facts in question, by virtue of the powers of investigation granted to the

control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation

General Data Protection, hereinafter RGPD), and in accordance with the provisions

ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed

that the data controller is the claimed party.

THIRD: On January 7, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FOURTH: The database of this Agency consulted on 03/05/20 does not contain any allegation in this regard in relation to the facts subject to transfer.

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

In this proceeding, the following are considered proven facts:

FACTS

First. On 10/18/19 a claim was received from the D.G. Civil Guard moving as the main fact “installation of a video-surveillance camera” oriented towards public space without just cause.

Second. In the document sent to this body, it is identified as the main responsible to Don A.A.A., a local resident.

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Third. The installation of some type of recording device is accredited, oriented towards public space outside the cases permitted by law, this being fact corroborated by the acting force.

Fourth. The address provided by the Security Forces and Corps appears as the address of the State- C/Alenar nº41 (Cuartillos) Jerez de la Frontera 11593.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-

rector of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

In the present case, we proceed to examine the claim dated 10/18/19

by means of which the following “installation of

video-surveillance camera” oriented towards public space without just cause.

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");

According to the acting force, the defendant has a device

oriented towards public roads without just cause, affecting the right of third parties

My data is "processed" by the accused.

“That public space should be understood, a concept that seems to encompass the

public thoroughfare, is not defined in the standard, but in the Dictionary of the Royal Academy in

web version, defines public roads as: "Street, square, road or other place through which

the public sits or circulates”, without mentioning any ownership, that is to say outside the definition

legal nition. And it must be stressed that private ownership of open land does not

justifies per se the recording of images in the case in question

of a “public place”, as indicated by the repeated Law 4 / 1997”.

It should be remembered that the individuals who install this type of device are

responsible for proving that they comply with current legislation.

Security cameras installed in private spaces will not be able to obtain

images of public spaces, the security function of public spaces

corresponds exclusively to the State Security Forces and Bodies.

The art. 77 section 5 of Law 39/2015 provides the following: “The documents

formalized by officials who are recognized as authorities and in

which, observing the corresponding legal requirements, collect the facts

verified by those will prove them unless proven otherwise”.

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III

The Supreme Court (Sentences of April 16 and 22, 1991) considers that of the element of culpability, it follows “that the action or omission, qualified as an infraction sanction administratively, must be, in any case, attributable to its author, by intent or recklessness, negligence or inexcusable ignorance.”

The National Court, in Judgment of June 29, 2001, in matters of protection of personal data, has declared that “simple negligence or in compliance is enough fulfillment of the duties that the Law imposes on the persons responsible for files or of data processing to exercise extreme diligence...”.

The Supreme Court (Judgments of July 5, 1998 and March 2, 1999) comes understanding that recklessness exists whenever a legal duty of care is disregarded. given, that is, when the offending subject does not behave with the required diligence. Dili- agency whose degree of demand will be determined in accordance with the circumstances current in each case, such as the special value of the protected legal interest or the professionalism required of the offender. In this sense, the aforementioned Judgment of June 5 of 1998 requires professionals in the sector "a duty to know especially the applicable rules”.

Applying the previous doctrine, the National High Court requires the entities that operate special diligence in the data market when carrying out the use or processing

processing of such data or transfer to third parties. And this because being the one of the protection of data a fundamental right (Sentence of the Constitutional Court 292/2000), the repositories of these data must be especially diligent and careful when operate with them and must always opt for the interpretation that is most favorable to the protection of the legal rights protected by the norm. In this sense, among others, Sentences of the National High Court dated February 14 and September 20, 2002 and April 13 and May 18, 2005).

The mere commission of an administrative infraction—objective type—is not enough to time to proceed to impose an administrative sanction.

Guilt as reproach to the active subject of the injury of the legal interest protected, is evident when the subject voluntarily performs the typical behavior intentionally directed to obtaining the unlawful result, which is sought and

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There must therefore be willful or negligent conduct, whether gross negligence or mild or simple, depending on the degree of neglect. And there is no negligence, nor therefore guilty and punishable infraction, "when the necessary diligence has been put into the compliance with the obligations required in terms of LOPD".

The defendant is aware of the situation of discomfort of some citizens in the installation of the system, ignoring the recommendations of the force acting.

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IV

In accordance with the evidence available in this proceeding,
sanctioning procedure, it is considered that the defendant has installed a visualization device.
deo-surveillance, oriented towards public space without just cause.

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

The art. 83.5 RGPD provides the following: "Infringements of the provisions
following will be sanctioned, in accordance with section 2, with administrative fines
EUR 20,000,000 maximum or, in the case of a company, an equivalent amount.
equivalent to a maximum of 4% of the total global annual turnover of the fiscal year
previous financial statement, 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;

The installed camera disproportionately captures public space,
so that there are less harmful means to the rights of third parties to install the
same.

When motivating the sanction, it is taken into account that it is an individual,
that has not been previously sanctioned by this body.

-Through it, images of passers-by are obtained
down the public sidewalk without just cause, who are intimidated by the device in
question (art. 83.2 a) RGPD).

-It should have been foreseen after the complaint filed, that the camera was wrongly oriented
tada, so the conduct is considered negligent to a slight degree (art. 83.2 b)
GDPR).

Therefore, it is appropriate to impose a sanction located on the lowest scale for this type
of infractions for the reasons stated, calculating the same in the initial amount of
€1,500 (One thousand five hundred Euros).

All this without prejudice to proceeding to reorient the camera in question that it is oriented preferentially towards his particular property or is relocated than to fulfill its purpose, but respecting the affected rights.

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: IMPOSE Don A.A.A., with NIF ***NIF.1, for a violation of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a fine of €1,500 (one thousand Five hundred Euros).

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SECOND: NOTIFY this resolution to Don A.A.A. and REPORT the result of the actions to D. G. OF THE CIVIL GUARD - MAIN POST OF SHERRY OF THE FRONTIER.

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 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

Data Protection Policy at Banco CAIXABANK, S.A. Otherwise,

will yield to its collection in the executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary 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 will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDGDD, the

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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

Following the notification of this act, as provided 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 LPA-

CAP, the firm resolution may be provisionally suspended in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

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Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the city
tada Law 39/2015, of October 1. You must also transfer to the Agency the documentation
certifying the effective filing of the contentious-administrative appeal. Yes
the Agency was not aware of the filing of the contentious-administrative appeal
nistrative within two months from the day following the notification of the pre-
This resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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