

□ File No.: EXP202206806

RESOLUTION OF SANCTIONING 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 June 13, 2022

filed a claim with the Spanish Data Protection Agency. claims her-

tion is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party). The

The reasons on which the claim is based are the following:

The complaining party in the file ***FILE.1 states that the inadmissibility

of your claim for a camera oriented to areas of the home of the party

claimant was based on the fact that the claimed party alleged that the affected area is

property of the latter, although the claimant states that by virtue of Proceedings

Verbal Trial proceedings XXXX/XXXX followed before the ***COURT.1, substantiated on

about the possession of the strip of land on which the party keeps the recordings

claimed, which has dismissed the claim of the claimed party to declare himself

Seeder of that portion of land, understands that it is proven that the part on which

that projects the action the camera of the claimed party is alien to the property of the

claimed party, and therefore, the orientation of the camera installed in the domicile of the

claimed party, capturing the aforementioned land, is contrary to the protection regulations

of data.

Provide a copy of the judgment dated June 1, 2022, simple note of the

house and photos of the location of the camera at the time of the present claim

(Annex I).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights (in hereafter LOPDGDD), said claim was transferred to the party claimed on fe-
date 06/15/22, to proceed with its analysis and inform this Agency on the plan within one month, of the actions carried out to adapt to the foreseen requirements.
cough in the data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations cas (hereinafter, LPACAP), was notified in a timely manner as stated in the acknowledgment of receipt that works in the file.

THIRD: On 07/03/22 the "response" of the transfer made by this Agency whose content is as follows:

“But what they don't say is that the sentence IS NOT FINAL, and it can be appealed.

Appeal that has been filed on 07/01/22, and I don't know how to send it to you. Said appeal-

I calculate that it will not be the result until the first quarter of the year 2023”

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FOURTH: On September 12, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the complaining party was admitted for processing.

FIFTH: On December 13, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, 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 te, LPACAP), for the alleged infringement of Article 5.1.c) of the GDPR, typified in the

Article 83.5 of the GDPR.

SIXTH: On 01/05/23, this agency received a written response to the claimed party to the Commencement Agreement, notified under the terms of the current LPAC, stating in law the following in relation to the claim presented:

"(...) I wish to state that the Judgment that serves as the basis for the claim

It is not yet firm since it is appealed in Appeal at the Hearing

Provincial (Cantabria) Section 4, whose appeal is processed with the number of reference Verbal Trial Appeals 785/2022.

In order to prove the above, I attach the following documents: Copy

Writ of Appeal with stamp of entry in the Court.

-Writ of appearance as Appellant (...)

"In view of the foregoing, I request the FILE of the file until such time as decide definitively by the Courts of Justice on the possession and ownership of the strip of land (...)"

SEVENTH: On 01/27/23 <Proposed Resolution> is issued in which proposes the File of the procedure as the matter of substance is judicialized in the At present, not having accredited "data processing" of third parties, nor being this competent body to enter into the substantive civil matter.

The information system of this body contains the notification to the party Claimed on 02/03/23 according to <Acknowledgment of receipt> sent by the Official Service of Posts and Telegraphs and incorporated into the administrative file.

EIGHTH: Consulted the database of this Agency on 02/20/23, there is no record that any writing has been received from the claimed party, nor any complementary allegation for this purpose has been produced.

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

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PROVEN FACTS

First. The facts bring cause of the claim dated 06/13/22 through the which the presence of a video-surveillance camera that could affect “te-land of his ownership” according to the Judgment provided by him.

Second. It is accredited as the main person responsible for the installation of the system B.B.B., who does not deny the installation of the cameras.

Third. The "private" ownership of the strip of land on which that we understand operates the video-surveillance camera(s), being a matter court between the parties.

Room. There is no accredited "data processing" of the claimant and/or their relatives, nor that they have been disseminated in any way.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-General Data Protection Regulation, hereinafter GDPR), grants each authority of control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, 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.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of

Regulation (EU) 2016/679, in this organic law, by the regulations

comments dictated in its development and, insofar as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In the present case, the claim dated 06/13/22 is examined through the

which moves the presence of a camera that records strip of private land of the par-claimant according to its manifestation.

The art. 5.1 c) GDPR provides the following: Personal data will be:

"adequate, relevant and limited to what is necessary in relation to the purposes

for those who are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed

felled comply with current legislation, certifying that it complies with all

the requirements demanded by the regulations in force.

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The installation of this type of device must have the mandatory informative poster

tive, indicating the purposes and person 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

to intimidate neighboring neighbors with this type of device, as well as control areas nas of transit of the same without justified cause.

Neither with this type of device can you obtain an image(s) of public space.

since this is the exclusive competence of the Security Forces and Bodies of the State

tado.

It should be remembered that even if it is 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, who are intimate measured by it in the belief of being the object 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 its inhabitants, avoiding the affectation of the rights of third parties who are intimidated two with the same

II

On 01/05/23, a written statement of allegations was received from the claimed party arguing the "non-firm" nature of the Judgment provided by the claimant, having been re-completed in time and form according to documentary provided to this Agency. Remember that a judicial pronouncement is not firm, if it is possible to review the itself, so it is not definitive, moment from which it can be demanded compliance with its terms.

Since we are faced with a judicial issue, whose pro-announcement can become "uncertain" at the present time, it does not correspond to this order. willingness to venture into issues of the civil jurisdictional order, considering

At the present time there is no objective evidence that determines an affectation to the right to data protection of the claimant.

Both parties should be reminded that this body is not the competent body to resolve the controversy between them, providing extensive documentary far from the study area of the same, incardinated in the civil framework and also object of analysis by the competent judicial bodies by reason of the matter.

It must be in a civil court where at the moment in your case the question, whether the presence of the camera(s) supposes a gross invasion of the right to privacy of the claimant and/or their relatives, although in the terms set forth to this body, the question focuses on the "strip of land" and not so much on a "data processing" that does not comply with current legislation.

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All the arguments presented to this Agency are based on the dispute between the parties for the presumed "ownership" of a strip of land between the properties of both, as justified by the expressions "property title", "purchase title" "cadastral reference", without the misuse of the images having been specified (personal data) in the regulatory framework that corresponds to this body.

It is not the job of this body to assess the documentary presented in the terms exposed as a "reassessment" of evidence presented in the instances competent civilians, who are also subject to appeal as the Judgment is not "firm". initially provided by the complaining party.

This body can only at this time recommend a renewal of the relations between the parties pending the corresponding judicial pronouncement or raise the issue in civil court in the case of finding ourselves before a glaring affectation of the "right to privacy" of the complaining party and/or their family-beef.

The Judgment of the National Court of April 1, 2011, appeal 2223/2010, in its Legal Foundation IV, last paragraph includes the following:

“The importance and transcendence of data protection regulations and the re-lifting of the constitutional rights that are at stake, advise that do not put themselves at the service of particular quarrels that must be resolved in areas that should have relevance only in the domestic sphere that is its own and not a sphere such as the jurisdictional one. The seriousness involved in the exercise of power sanctioning body recommends that the administrative and jurisdictions only when it is supposed that there has been a true violation of the fundamental right to data protection. Such circumstance-
cia does not concur in the present case”.

Any other "controversial" issue that may occur in the strip of land de-should be transferred to the Security Forces and Corps of the locality, where appropriate.
quality, which can, where appropriate, intervene and guide the parties as to whether they find us
We are faced with alleged violations of data protection.

IV.

According to the arguments of both parties and evidence provided, it is considered that there is no objective evidence that proves an affectation of the right of the re-plaintiff in the matter of data protection, reason that justifies the proposal of Ar-goat of the current procedure.

Both parties are reminded of the importance of the rights at stake, while avoiding instrumentalizing this body in matters of civil property, away from of the competence framework of this body, having to wait, where appropriate, for the result of the opportune judicial pronouncements or by providing objective evidence in the matter that occupies this body that allow a new assessment of the exposed facts.

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Therefore, in accordance with the applicable legislation and assessed the criteria of

graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no

accredited that the facts object of transfer suppose an administrative infraction

in terms of data protection.

SECOND: NOTIFY this resolution to Mr. B.B.B..

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

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reversal before the

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

count 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 for in article 46.1 of the

referred Law.

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