

□ Procedure No.: PS/00214/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: D. G. OF THE CIVIL GUARD - OLIVENZA POST (*hereinafter, the
claimant) dated February 13, 2020 filed a claim with the Agency

Spanish Data Protection. The claim is directed against A.A.A. with NIF

***NIF.1 (hereinafter, the claimed one). The grounds on which the claim is based are
succinctly the following:

“A Complaint is received in this position formulated by XXX against the person who
It appears as denounced for alleged damages. In the complaint, he stated that the
denounced had installed on the door of the porch of his home, a camera
DOMO model, which captured an image of the entrance to his home (***ADDRESS.1),
as well as part of the public road where pedestrians and vehicles circulate”

Along with the claim, it provides as Annex I (Technical Report on the existence of the
cameras).

On the porch of house number 11 there are two recording cameras

As can be seen in photos 3 and 4.

On the facade of apartment No. 11, there is a security plate of the
company PROSEGUR, it is unknown if it has been placed by said company,
for providing video surveillance services or for this, to create an effect
deterrent (Photograph No. 2).

“On the window sill of said room, a security camera is fixed.

Garmin brand and depending on its orientation, it could be focusing towards the

terrace of the ground floor of the complainant" (photographs nº 7, 8 and 9)".

A Prosegur Report is also attached, confirming the removal of the contracts in the name of the denouncer on 04/24/17 and 04/12/14.

SECOND: After consulting the database of this Agency, it is associated with the denounced the procedure with reference number A/00151/2014.

Said procedure concluded by means of resolution R/01922/2014, dated 10 of October 2014 by which it was resolved "REQUIRE D. A.A.A. according to established in section 6 of article 45 of Law 15/1999 so that within the term of one month from this act of notification:

2.1.- COMPLY with the provisions of article 6.1 of the LOPD. Specifically, it is urged denounced the withdrawal or reorientation of the cameras installed outside the domicile denounced so that they do not capture public roads.

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2.2.- REPORT to the Spanish Data Protection Agency of the compliance with what is required, providing photographs of the monitor image that reproduces what is captured by the cameras once reoriented so that only the address or photographs evidencing the withdrawal of the reported cameras installed outside in such a way that they do not capture the public thoroughfare."

In order to monitor the measures to be adopted by the Director of the Spanish Agency for Data Protection urged the Subdirector General for Inspection of Data the opening of the file of previous actions of reference E/05512/2014.

THIRD: On October 15, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the defendant, with glo to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-Common Administrative Procedure of Public Administrations (hereinafter, LPA-CAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FOURTH. On 11/05/20, this Agency received a written statement of allegations from the denounced stating that the cameras are simulated, because as I say, never have been operational or in operation, and therefore have neither captured nor taxed images.

Pursuant to this principle, no penalty may be imposed on the basis of the guilt of the accused if there is no activity to prove the charge, which in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TCo Auto 3-12-81)."

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

SIXTH: On 11/10/20, a Resolution proposal is issued, proposing a sanction encrypted in the amount of €3,000 (Three Thousand Euros), upon accrediting the illegality of the system, not accrediting the fictitious nature of the installed cameras, violating the content of art. 5.1 c) GDPR.

SEVENTH: On 12/15/20 allegations are received from the defendant, stating the Next:

"That the cameras that are the subject of this proceeding have never been operational or in operation, and that have currently been uninstalled for a long time.

That the very technical report of the Civil Guard that has given rise to the

this Punishment Procedure, reaches the conclusion that "That neither can be demonstrate, if the cameras are in operation...", made this last one that I could not demonstrate this Agency either, because as I say, they have never been operational or in operation, and therefore have neither captured nor recorded images

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In relation to the dome camera that was installed in the entrance courtyard of my home, was already analyzed by this Agency in the procedure A/00151/2014, reaching the conclusion of this Agency that it was not capable of capture or record images, as accredited with Doc. No. 6.2E/7501/2013 that was contributed

As proof of all the above, we enclose as documents of the one to four, photos of the simulated cameras disassembled".

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

PROVEN FACTS

First. Mr. A.A.A., who acknowledges being the main responsible for the system, stating the following "I proceeded to install cameras simulated created a deterrent effect".

Second. The accused party asserts that the installed cameras have never been operational, fulfilling a dissuasive function, proceeding to uninstall them.

Documentary Annex is provided (Written dated 12/15/20) where it has proceeded to uninstall the cameras in question.

Third. The informative posters indicating that it is a video-monitored area are of the company Prosegur, although it confirms the cancellation of the contracts in the name of the accused.

Fourth. In the opinion of the Instructor of the Technical Report (Civil Guard) the cameras installed located on the ground floor, due to their position they could be recording the public thoroughfare.

Fifth. There is a prior proceeding A/00151/2014 associated with the defendant, in where the defendant proceeded to uninstall the cameras at the request of this Agency.

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 Director 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 COMPLAINT dated 02/13/20 sent by the Civil Guard Directorate (Olivenza Post) through which it is communicated the installation of various video-surveillance devices by the accused, with guidance both towards the private space of third parties and towards public space.

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According to the report attached to the complaint, “the existence of tenure of several cameras in the house nº 11 C/Monsaraz. that on the porch of the

ground floor there are two cameras and one of them is of the DOMO type and 360° recording, that based on his position he could be recording images of public roads.”

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").

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 areas 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 intimated by it in the belief of being the subject 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 camera can fulfill a dissuasive function for housing protection, while making sure not to obtain images from public/private third-party space without justified cause.

In accordance with the evidence available in this proceeding, sanctioning procedure, it is considered that the defendant has several video cameras deo-surveillance, which were misguided, affecting the rights of third parties without It's justified.

The defendant states that the cameras "have never been operational", fulfilling a dissuasive function for reasons of security of the property.

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Therefore, given that no data processing has been carried out with them, First, there is no mention of any administrative infraction in the field of protection of data.

Although in the past the AEPD has sanctioned data controllers due to the use of this type of device, it is currently understood that the use of cameras simulated does not imply an infringement of the fundamental right to data protection.

In fact, the latest version of his Guide to Using Camcorders for Security and other purposes, the AEPD expressly establishes that Regulation (EU) 2016/679, regarding the protection of natural persons with regard to the treatment processing of personal data and the free circulation of these data and by which the Directive 95/46/EC ("RGPD"), does not apply in the case of simulated cameras

"Based on the material impossibility of putting the cameras into operation, for lacking all the technical elements that were necessary for its use.

The "events" of occurring again may be part of a civil wrong,

being a disproportionate measure the affectation of the right of third parties with this type of device (vgr. First Chamber of the Supreme Court of November 7, 2019).

The TS reasons that when an individual does not know that he is being filmed, behaves with a naturalness and spontaneity that would not occur otherwise. And that “The plaintiff’s right to the tranquility of his private life also includes the of not having to endure permanent uncertainty” about whether the camera in question is or is not operational, or whether RCRE has replaced it with a fully functional one and identical in appearance.

Therefore, it is recalled that the installed cameras must be oriented given exclusively towards their particular property, and cannot be directed towards public and/or private space of third parties, even in the case of not being operational, due to the stated reasons.

IV

In accordance with the foregoing, it can be concluded that during the processing of this proceeding the defendant has proven the non-operationality of the installed system, motivated vo by which it is appropriate to order the Archive of this procedure.

The defendant is warned about the transcendence of the rights at stake, Being the second procedure that on the same facts is analyzed in this Agency, having to follow the indicated indications to avoid the affectation of the de-right of third parties, even in the case of simulated or non-operative cameras, being able in case of recidivism face a sanction for not meeting the requirements of this organism.

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: ORDER the ARCHIVE of these proceedings as they are not accredited

any administrative infraction in the matter that concerns us.

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

of the actions to the denouncing party D. G. DE LA GUARDIA CIVIL - POSITION

OF OLIVENZA.

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

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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