



File No.: PS/00497/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 06/03/2021, it had entry in this Spanish Agency of
Data Protection a document submitted by A.A.A. (hereinafter, 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 on land
located at ***ADDRESS.1, with indications of a possible breach of the
provided in the personal data protection regulations.

The reasons underlying the claim are as follows:

“The person responsible for the cameras installed by the Securitas Company
Direct. You have installed them without my permission or consent despite being a co-owner
of the land.

He has installed 7 surveillance cameras for me to see, with their 130° focus, vision
night vision and integrated listening microphones. 4 of those cameras point
directly to my house, my entrance and common game site. At night light some
spotlights that he has put on the cameras to focus on us and spy on the movements of the
cameras...

We have constant intimidation and threats from this lady, since
we are on trial for the partition of the land.

We feel harassed and intimidated despite giving you peaceful notice
not put cameras pointing at my house.

[...]

Attach photographic report of the location of some of the cameras.

SECOND: In accordance with the provisions of article 65.4 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of the digital rights (hereinafter, LOPDGDD), was transferred on 06/17/2021 and 09/09/2021 of said claim to the claimed one, so that it could proceed with its analysis and inform this Agency within a month of the actions carried out to comply with the requirements set forth in the data protection regulations. The first notification occurred on 06/29/2021, without this Agency receiving any reply.

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However, upon receipt of the second notification, the respondent filed a written allegations on 09/27/2021, in which it provides a copy of the service contract of security that has signed with the company "Securitas Direct Spain" in relation to a video surveillance system installed in your home located on the street ***ADDRESS.2. It shows that the system consists of 3 elements of verification by image (image treatment) and 1 verification element by sound (voice treatment), but the claimed one does not send a photo of the field of vision of the cameras.

THIRD: The claim was admitted for processing by resolution of 10/08/2021.

FOURTH: On 10/13/2021, the claimant sent a letter to the AEPD in which indicates the following: "The street camera location address ***ADDRESS.2,

it is not such I put that address thinking that they asked me for the one claimed for send you the notification or postal certification. The address where the cameras is ***ADDRESS.1.

The claimed continues to maintain and even add more night lights to control our movements at night...”

Attached plan of orientation of the cameras.

FIFTH: On 12/15/2021, the Director of the Spanish Agency for the Protection of Data agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD.

SIXTH: On 12/23/2021 the aforementioned start-up agreement is notified and, in accordance with the regulations established in Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter, LPACAP), the part claimed

He presented a brief of allegations in which, in summary, he states the following:

“I have installed the cameras to which the complaint refers, in the farm of which I am co-owner and use exclusively.

The cameras capture the farm and plot space that I have been using, according to a agreement of division of common thing subscribed enters the appearing here, my brother (now complainant) and his father (...). Since then, I have been owning Solar C and my brother has been owning plots A and B (...).

[...]

I have the use of the house in which the cameras have been installed here appearing since 2011 in which the agreement to divide the thing was signed that I accompany, so I do not need your authorization for the installation of the cameras (...)

I accompany.

- Agreement of division of common property in which the part of the property that each

one enjoys (...).

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Photographs of identification signs.

- Complaint relating to one of the fires.

- Contracts with the Securitas Direct and Aranzadi companies that I point out to test effects.

SEVENTH: On 02/02/2022, the instructor of the procedure makes a request

of proof in which, basically, it requires the claimed party to provide

sharper photographs than what the cameras capture, indicating what your property is;

as well as the property title of the plot that he claims to be his.

EIGHTH: In accordance with article 53.1.a) of the LPACAP, the party claimed

requests on 02/03/2022 a copy of the file of this procedure

sanctioning, resulting delivered on 02/09/2022.

NINTH: On 02/21/2022, the respondent submits a new document in which

provides, as new documentation, the following:

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Photographs of what the video surveillance cameras capture to date

02/13/2022 with a brief explanation of what can be seen in them.

- Simple notes from the Property Registry of *** LOCATION.1 dated 09/20/2019 of the farms.

- Death certificate and will of the claimant's father and the

claimed.

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Securitas Direct report.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: Installation of a video surveillance system, made up of at least 9 cameras, on the ground, located at ***ADDRESS.1, ***LOCATION.1, which could capture images of private use areas of a part of the claimant's farm, such as like your home or driveway. It provides a photographic report where the existence of several cameras in different points of the land. Also attach a plan of the plot on which it indicates the placement of each of the devices and your orientation.

SECOND: It is identified as the main person in charge of the B.B.B. with NIF ***NIF.1.

THIRD: In the allegations to the opening agreement of this procedure sanctioning party, the respondent states, in short, that the video surveillance cameras

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they only capture the part of the land that has been used exclusively since 2011, in accordance with the provisions of the Common Property Division Agreement of that same year.

This extreme is accredited with the images that it contributes about what each captures.

one of the cameras, where it is observed that the elements that are displayed are within the portion of the farm that would correspond to the claimed one.

FOURTH: Between the parties there is a judicialized conflict according to the statement of the claimant, for the division of the land.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, on the 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 Agency for Data Protection will be governed by the provisions

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

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

II

The defendant was charged with the commission of an infraction for violation of article

5.1.c) of the RGPD, considering that it installed at least 7 cameras, at different points

of the plot, located at ***ADDRESS.1, capable of capturing images of the house

and private use areas of the claimant.

Article 5 section 1 of the RGPD "Principles related to treatment" provides that:

"Personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which

that are processed ("data minimization").

This article establishes the principle of data minimization in the treatment of personal information. It assumes that said treatment is adjusted and proportional to the purpose to which it is directed, and the treatment of excessive data must be restricted or proceed to delete them.

The relevance in the processing of the data must occur both in the field of collection of the data as well as in the subsequent treatment that is carried out on them.

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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 sign informative, indicating the purposes and responsible for the treatment in your case of the data of a personal nature.

Article 22.4 of the LOPDGDD provides that:

"The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood fulfilled by placing an informative device instead sufficiently visible identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code or internet address to this information."

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.

Nor can images of public spaces be obtained with this type of device,

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 a private space, since it is considered

that this type of device can affect the privacy of third parties, which are seen

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

On the part of individuals, it is not possible to install sections for obtaining images

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

This infringement is typified in article 83.5 a) of the RGPD, a provision that establishes:

“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,

in the case of a company, an amount equivalent to 4% of the turnover

global annual total of the previous financial year, choosing the highest amount:

a) The basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

(...)”

III

On 01/14/2022, a written statement was received from the respondent in which

states, in summary, that the video surveillance system captures "the space of the farm and

plot that I have been using, according to a common thing division agreement signed

between the person appearing here, my brother (now the complainant) and his father. The use of

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I have had the house in which the cameras have been installed since 2011 when the agreement was signed”.

In accordance with the screenshots provided by the claimed in its new writing of 02/21/2022, it is considered that the cameras on 02/13/2022 are limited to capture images of the space that would correspond to the site allocated to it, in accordance with the copy you provide of the aforementioned agreement. Well, it's not displayed. the areas of private use of the claimant, specifically, his home or access.

It should be noted that article 28.7 of the LPACAP provides: "The interested parties They will be responsible for the veracity of the documents they present.

IV

Based on all of the above, it can be concluded that it has not been proven that the system of video surveillance installed by the claimed affects the private use space of the claimant (housing or access), limiting the collection to the area of land adjacent to the building where most of the cameras have been placed, as well as to part of the site that would correspond to the claimed.

The parties are reminded that this body is not going to mediate in any class of “family and/or personal” conflict between them, and should, if applicable, go to the competent judicial authority if deemed necessary.

Therefore, according to the above,
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no accredited the commission of the administrative infraction object of claim.

SECOND: NOTIFY this resolution to the claimant and the respondent.

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

Interested parties may optionally file an appeal for reconsideration before the

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

counting 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 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

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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

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or 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 proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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