

□ File No.: PS/00408/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the complaining party) dated May 12, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the part

claimed). The grounds on which the claim is based are as follows.

“Some recording cameras have been placed towards my home (...) that is why
that I inform the competent authority” (folio nº 1).

Together with the claim, it provides documentary evidence (Annex I) that proves the
presence of a device oriented towards the proximity of the residence of the
crying and public transit area.

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

December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), said claim was transferred to the claimed party in fe-
cha 05/27/21 and 07/03/21, to proceed to its analysis and inform this Agency
within a month, of the actions carried out to adapt to the requirements
provided for in the data protection regulations.

No response has been received to this letter, nor has any clarification been made.
to that effect.

THIRD: On August 10, 2021, the Director of the Spanish Agency for

Data Protection agreed to admit for processing the claim presented by the party
clamant.

FOURTH: On September 24, 2021, 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: On 10/13/21, the instructor of the procedure required the collaboration of the Security Forces and Corps (National Police) so that the displacement two to the place of the facts verify the extremes object of claim.

SIXTH: On 11/15/2021, a Report was received from the National Police (Provincial Brigade). Citizen Security-Las Palmas) moved to the scene of the events that manifests the "no collaboration of the owner of the property to attend to the force ac- verifying the presence of three cameras and that the owner was not going to collaborate

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rar nothing, the matter being in the hands of his lawyer. Item, a sign is observed very blurred that seems to be from the Prosegur Alarmas Company".

SEVENTH: On 12/03/21, a "Resolution Proposal" was issued, in which considered after checking the acting force of the system object of claim, consider verified the illegality of the denounced system, proposing a global penalty of €2,500, for the two offenses committed: art. 5 GDPR and 13 GDPR.

EIGHTH: On 01/05/22, a written statement is received from the respondent

in which it states the following:

"I bother to respond to this demand out of respect for my property, my safety and that of my family (...)

The Lawyer who represents me has already responded to the message addressed to my address in his first writing, which is already the subject of a Complaint. Also inform them that their

"Referent agents" that I send to my property are reported for trespassing of residence, for intimidation and for refusing to identify themselves, etc.

...be very careful with what you do and the people you send to me address, in order to intimidate me and accuse me of planting cameras in my property illegally and invading the home that the person seizes complainant of the facts (...)

It is obvious that I am going to denounce such a situation of harassment and mistreatment by the AEPP that you represent since they are accusing and pressing with facts false and arbitrary, apart from harassing, annoying and intimidating my family and me"

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 05/12/21 through the which the following is transferred by the complaining party:

"Some recording cameras have been placed towards my home (...) that is why that I inform the competent authority" (folio nº 1).

Together with the claim, it provides documentary evidence (Annex I) that proves the presence of a device with orientation towards the proximity of the claimant's home and public transit area.

Second. He is accredited as the main person responsible for the installation of the system

B.B.B., with NIF ***NIF.1.

Third. The presence of video-surveillance cameras (three) in the front of the house with obvious orientation towards public transit area and

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adjoining properties, being the same operatives, without any explanation has been given in this regard.

Fourth. It is proven that the informative poster is blurred and does not fit the regulations in force regarding data protection, indicating only the company installer—Prosegur--.

Fifth. There is proof of police presence in the home object of the claim refusing to collaborate with the acting force in any "clarification" on the Camera system installed.

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, the claim dated 05/12/21 is examined by me- from which the following is transferred as the main fact: "some chambers have been placed recording gangs to my home (...) that is why I am bringing it to your attention of the competent authority" (folio nº 1).

A series of frames are provided (Annex I) that allow verifying the pre-presence of several cameras, although their operation is unknown or if they are are poorly oriented, although given the proximity to the claimant's home it is can infer a certain uptake of transit area.

The above facts constitute an infringement of art. 5.1 c) RGPD that dis-puts: Personal data:

c) 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.

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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 intimidated 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.

III

In accordance with the "evidence" available in this proceeding sanctioning party, it is considered that the claimed party has a camera system of video-surveillance with orientation towards public/private space of third parties without cause justified.

In accordance with the manifestations of the acting force displaced to the place of the events, the presence of the cameras object of the claim is verified, as well as the absence of an informative poster(s) in this regard, refusing to collaborate with requirement of the competent authority.

Article 77 section 5 of Law 39/2015 (October 1) provides the following:

"5. The documents formalized by the officials who are recognized as condition of authority and in which, observing the corresponding legal requirements, the facts verified by those are collected will prove them except prove the contrary".

The known facts constitute an infraction, attributable to the party claimed for violation of the content of art. 5.1 c) RGPD, as well as article 13 GDPR.

IV

The art. 83.5 RGPD 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:

a)

b)

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

consent under articles 5, 6, 7 and 9;

the rights of the interested parties under articles 12 to 22; (...)

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

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- 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

fired; (art. 83.2 a) RGPD); as the system is affecting the private area of the claimant

and public without just cause.

- the intent or negligence in the infringement; (art. 83.2 b) RGPD), by not

take the necessary precaution for the correct orientation of the camera (s) object of de-

complaint, in accordance with what was widely exposed, as well as for not attending to the

requirements of the acting force displaced to the scene

In accordance with the foregoing, a sanction encrypted in the amount of €2,500 is agreed.

(1500 Infraction 5 RGPD + €1000 Infraction 13 RGPD), by having a system of

chambers that does not comply with current legislation, sanction located on the lower scale

for these types of offences.

Respondent can obtain guidance on current requirements

required by the regulations in force on the website of this body www.aepd.es, remembering that a persistence in the infringing action can lead to the opening new procedure(s), where the lack of collaboration and in-repeated compliance with the requirements of this body, when imposing a new financial penalty.

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 Doña B.B.B., 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 €1,500 and for the infringement of article 13 RGPD, typified in article 83.5 b) RGPD, a sanction of €1,000, both being sanctionable in accordance with article 58.2 RGPD.

SECOND: ORDER the claimed party in accordance with article 58.2 d) RGPD within ONE MONTH from the notification of this act, proceed to:

-Put up an informative poster homologated to the regulations in force, indicating that it is a video-monitored area, as well as indicating the person responsible for the treatment. lie of the images.

-Reinstallation or, where appropriate, removal of the cameras from their current place of emplacement, in such a way that they do not capture public space, nor exclusive of third, providing photography (before and after such action).

THIRD: NOTIFY this resolution to B.B.B. and REPORT the result of the proceedings to the claimant.

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-

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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 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 is between the 16th and last day of each month, both inclusive, the term of the payment It will be valid 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

tion 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. If it is-

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.

Sea Spain Marti

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