

□ Procedure No.: PS/00359/2020

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 claimant) on July 9, 2020 filed
claim before the Spanish Data Protection Agency. The claim is
directs against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed). The reasons in which
the claim is based on are as follows:

“For more than a month in the house located just in front of
our property, specifically in the property with cadastral reference ***REFERENCE-
CIA.1, located at ***ADDRESS.1, a camera has been placed in its part
superior, oriented to the public thoroughfare and to our building (...”).

Together with the claim, it provides documentary evidence that proves the presence of a
device outside the dwelling oriented towards public space (Doc.
evidence no. 1).

SECOND: On 08/05/20, the claim is TRANSFERRED to the
denounced so that it manifests what it deems appropriate in law.

THIRD: The database of this Agency consulted on 01/07/20 has not been
received any complaint in this regard.

FOURTH: On February 22, 2021, 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.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written pleadings in which, in summary, it stated the following:

“The video surveillance camera that the procedure deals with was installed with the sole purpose of security on my property, being oriented to my particular space.

without recording any neighboring property or exceeding the limits of established public roads.

legally established and without seeking harm or violation of the privacy of any some neighbor

-Prior to the placement of the aforementioned camera, permission was requested from the town hall of the municipality, which was granted in May 2020 (ANNEX I)

-The direction of placement of the camera and therefore of my property is

***ADDRESS.2, not ***ADDRESS.1.

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-After receiving notification of the claim process on 08/13/2020, it begins-

The corresponding accrediting procedures were completed and the required documentation was provided by certified letter sent to the Spanish Data Protection Agency.

(I provide receipt of certified letter sent, ANNEX II).

-After the events and given that our allegations and information re-

dear have not been duly registered, we once again provide the documentation

documentation initially required, demonstrating compliance with the

data protection and waiting for the sanctioning file to be resolved in this way (...).”.

SIXTH: Attached as an annex is a list of documents in the

procedure, as well as making available the documentation of the file in case of requiring it.

SEVENTH: On 03/12/21, a Resolution Proposal is issued in which it is considers the commission of the infraction described to have been accredited when disposing of the denounced a camera disproportionately oriented towards the transit area, violating art. 5.1 c) RGPD, proposing a penalty of €1,500.

EIGHTH: On 03/25/21, a written statement was received from the accused wielding in the exercise of his right of defense the following:

“It is the responsibility of the company ***EMPRESA.1 the proper placement of the aforementioned security camera, considering the best angle to capture the door and facade of the claimed one, never intending to record more public roads than necessary, considering the narrowness of the street.

The claimant owns a property with cadastral reference ***REFERENCE.2 located at ***ADDRESS.3, with one of its facades located at this same ***DIRECTION.

RECCION.2 nº XX, (street to which we are referring in this claim)

in which several video surveillance cameras are placed, one of them oriented towards this same public road, for which they should understand the use of maras as an element of security and not surveillance of public thoroughfares or any other neighbor. (ANNEX II)”.

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

PROVEN FACTS

First. The facts are specified in the claim dated 07/09/20 through which translates the following:

“For more than a month in the house located just in front of our property, specifically in the property with cadastral reference ***REFERENCE-

CIA.1, located at ***ADDRESS.1, a camera has been placed in its part

superior, oriented to the public thoroughfare and to our building (...)"

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Second. It is accredited as the main person in charge Doña B.B.B. which

states that they have the aforementioned device for security reasons in their home located

at ***ADDRESS.2

Third. The camera is installed on the side of the house, above a manhole

of light, with orientation along a small path of public nature.

In accordance with the image provided (Proof Document No. 2), it is verified

as the device controls the entire width of the road from a top view.

Fourth. The defendant provides a photograph where the presence of a poster is observed

informative, although it is not accompanied by the date and time of taking the photograph.

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 re-

solve this procedure.

II

Before addressing the merits of the matter and in relation to the complaint made by the complaint,

ciated that the claimant also has an illegal camera system, it is re-

rope that must file the corresponding Complaint before this body, providing

irrefutable proof of what was stated (eg photography, absence of poster, etc.).

Once admitted for processing, it will follow the same procedural channel.

than the one made with the current claim.

Article 62 Law 39/2015 (October 1) provides: "A complaint is understood to be the

act by which any person, in compliance or not with a legal obligation, puts

knowledge of an administrative body the existence of a certain fact

that could justify the ex officio initiation of an administrative procedure.

In any case, the fact that both parties have "irrespective" camera systems

gular" does not legitimize for any the treatment of data carried out outside the cases

permitted by law.

Likewise, the mere presence of the camera does not determine that it captures beyond

than necessary, for which it is necessary to know what is being recorded with the

same.

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III

In the present case, the claim dated 07/09/20 is examined by me-

gave from which the following is transferred as fact:

"For more than a month in the house located just in front of

our property, specifically in the property with cadastral reference ***REFERENCE-

CIA.1, located at ***ADDRESS.1, a camera has been placed in its part

superior, oriented to the public thoroughfare and to our building (...)".

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 video surveillance cameras on the street corresponds solely and exclusively to the State Security Forces and Bodies in the performance of functions security.

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.

The art. 22 section 4 of LO 3/2018, December 5 provides the following:

“The duty of information provided for in article 12 of the Regulation (EU)

2016/679 will be understood to be fulfilled by placing a computerized device

in a sufficiently visible place identifying, at least, the existence of the treatment

to, the identity of the person in charge and the possibility of exercising the rights foreseen in

Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

informative positive 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.

The installation of surveillance cameras that record part of the public thoroughfare should limit

only what is strictly necessary, always respecting the principle of proportionality.

This means that its placement must be proportional to the purpose pursued, in this case

security, and must not under any circumstances put the privacy of other people at risk.

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

must be oriented towards private space, since it is considered that this type of devices can affect the privacy of third parties, who are intimidated by the herself 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.

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IV

In accordance with the evidence available in this proceeding sanctioning party, it is considered that the defendant has a device oriented into public and/or private space of a third party without just cause.

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 noted that the device installed on the facade of the house captures the entire width of the public transit area (since it is no more than 4 meters wide) width), obtaining images of the vehicles that transit, as well as the data of everyone who is in the width of the road.

It must be taken into account that regardless of the security of the dwelling, da, with the same affects the rights of third parties that are permanently recorded in their daily work due to the narrow width of the road, therefore the installation of the same is not suitable for the intended purpose.

The installation of this type of device is restricted, and must be

Prioritize less invasive means for the security of the property (eg security alarm).

ity or even interior chambers).

So that in the weighting of conflicting interests it is considered appropriate
ted to protect the right to data protection of the neighbors across the street, since
otherwise these would be permanently controlled in their inputs/outputs
of the dwelling in question.

The right of the plaintiff covers the tranquility of his private life,
a better placement of the system in question being enough for there to be a balance
between the rights of both parties, not being controlled by the same in its que-
everyday doings.

The fact that the installation was carried out by a third party “NetworkBurgoSat
S.L.” does not exempt the responsibility of the owner of the system, without prejudice to the actions
that in his case could make the complaint against the installation company.

Building security can be achieved by restricting the field of vision
of the cameras or performing a reinstallation of the system, with a greater number
of cameras or even with interior cameras, weighting the rest of the rights in
conflicts and the proportionality of the measure taking into account the characteristics of
the area to install.

The known facts constitute an infraction, attributable to the defendant, for
Violation of the content of article 5.1 c) RGPD.

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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)

the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

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

-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 affected parties and the level of damages they have suffered (art. 85.2 a) RGPD).

- The intention or negligence in the infringement (art. 85.2 b) RGPD).

It should be noted that this body has widely guided the person reported to the relocation of the camera in question, in such a way that the rights of third parties, thereby avoiding this sanction, showing an attitude of little collaboration, persisting in the offending behavior, for which it is considered that there is gross negligence.

Based on the foregoing, it is agreed to impose a sanction encrypted in the amount of €1,500, a sanction located on the lower scale for this type of infraction.

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 of the RGPD, a fine of €1,500 (Thousand Qui-

hundred Euros).

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

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 Co-

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

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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

between the 16th and last day of each month, both inclusive, the payment term

It will be 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. Of being

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

Director of the Spanish Data Protection Agency

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