

□ Procedure No.: PS/00169/2021

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 claimant) dated January 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 claimed one). The

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

“Irregular installation of a camera towards a public and/or private transit area
of the affected. I request that you check such cameras to safeguard my image and
intimacy” (folio nº 1).

SECOND: On 02/11/21, the claim is transferred to the respondent,
without any response being made in this regard.

THIRD: On May 5, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the claimant, for the
alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the
GDPR.

FOURTH: On 06/11/21, a written statement is received from the respondent
stating the following:

“That he did not respond to the transfer of the initial claim made on the date
02/11/21 because he did not receive any type of notification in this regard.

That in order to comply with the current legislation regarding the Protection of
Data and before installing the cameras referred to in this procedure,
designed and implemented a whole series of measures of a technical and organizational nature. I know

accompanies as Document nº1 and as Document nº2 installation invoice invoice

installation dated 03/09/2021.

That although it is true that the cameras focused minimally on public roads and property of the plaintiff, the installation was made in good faith, in the belief that was fully in accordance with the law (...)

Based on the foregoing, this part considers the three requirements to have been met, which the measure exceeds the judgment of proportionality and that the circumstances will be equal ble to those described, among others, in the Action File Resolutions of the AEPD Files E/06807/2017 and E/010406/2018.

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2/5

“That if the AEPD understands that the measure is not comparable and that it is proportionate and however it is the will of this party to comply with the Legislation in force, possible deficiencies have been rectified by placing of privacy masks (...)

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

First. The facts are specified in the claim dated 01/12/21 through

which translates the following:

“Irregular installation of a camera towards a public and/or private transit area of the affected. I request that you check such cameras to safeguard my image and intimacy” (folio nº 1).

Second. It is accredited as the main responsible B.B.B..

Third. The presence of an informative poster(s) in the visible information area is accredited.

I command that it is a video-monitored area.

Fourth. The reasons for the installation of the camera(s) is justified by the claimant in various disagreements with the claimant, materialized in alleged threats.

It is provided in support of the argument Copy of Complaint dated 04/26/21 before the National Police (Doc. nº 5).

Fifth. The images provided by the claimant confirm that he has proceeded to masking of various areas so that there is no evidence of involvement of areas of the claimant and/or public space.

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, we proceed to analyze the claim dated 01/12/21 by means of from which the alleged "irregular installation of a camera to the public and/or private transit area of the affected party" (folio No. 1).

Article 5 section 1 GDPR "Principles related to treatment" provides that: "The personal data will be:

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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.

They will be installed at the different entrances to the video-monitored area and, in a visible place, one or several posters that inform that you are accessing a video-monitored area.

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.

The recording system will be located in a guarded place or with restricted access. At recorded images will be accessed only by authorized personnel, who must enter a code say username and password. Once the system is installed, it is recommended regular password change, avoiding easily deductible ones.

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 imaging devices

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

The camera(s) cannot focus on public roads. If it is necessary to protect the entrance from a house or that of the garage or establishment, the installation must pass the judgments of proportionality, suitability and minimal intervention.

III

In accordance with the evidence available in this proceeding sanctioning party, it is accredited that the denounced system is adjusted to the current legality.

The provided images obtained from the video-surveillance system confirm the masking of the areas close to the dwelling, so that the same circumstances they consign the recording to the private property of the claimed party.

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4/5

The Constitutional Court, in its ruling No. 22/1984 (Rec.59/1983), of 17

February, the inviolable domicile as: "a space in which the individual lives without being necessarily subject to social uses and conventions and exercises its most intimate freedom thyme".

This body is not going to assess the presumed proportionality of the measure. measure put forward, given that as it manifests it has proceeded to "mask" any area affected by them, as soon as he became aware of the facts subject to complaint.

The principle of presumption of innocence prevents imputing an administrative offense when proof of charge accrediting the criminals has not been obtained and verified.

facts that motivate the imputation or the intervention in them of the presumed infraction
thor. Applying the principle "in dubio pro reo" in case of doubt regarding a fact
concrete and determined, which obliges in any case to resolve said doubt in the most
favorable to the interested party.

The respondent is reminded that at all times the cameras must be
oriented towards their private space, not being allowed to capture the public area.

ca, being able a hypothetical ignorance of the recommendations of this organism,
give rise to a new opening of sanctioning procedure, without prejudice to the

You can perform an on-site investigation of the installed system.

The images obtained in the event of vandalism or other acts may
be provided in court in order to prove the presumed author(s) of the heirs.
chos, serving the same to support a hypothetical criminal conviction in his case.

IV

In accordance with the foregoing, it should be noted that the respondent has a system of
video-surveillance, which has proceeded after the first news of the Complaint to adopt
all the necessary measures to adjust the system to current legislation, there is no evidence
affecting private and/or public areas without just cause.

All this leads to the ordering of the Archive of this procedure, re-
agreeing to the parties the transcendence of the rights at stake, owing in all
time to adopt the necessary measures to adjust to current legislation and accrue
giving in his case to the Forces and Bodies of security of the locality to solve
any other "business" between them.

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 FILE of this procedure as there is no evidence

gives the commission of any administrative infraction.

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5/5

SECOND: NOTIFY this resolution to B.B.B. and REPORT the result of the actions to the claimant A.A.A.

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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