

□ Procedure No.: PS/00228/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Mrs. A.A.A. (*hereinafter, the claimant) dated February 3, 2020

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 reasons on which the claim is based are the installation of a video camera-
surveillance oriented towards public road obtaining images of third party (s) without
just cause.

"This electronic device is located on the farm of the defendant referenced
in the geographical position of the following coordinates 42° 53´(according to Google Maps) of the
place ***PLACE.1".

Together with the claim, it provides documentary evidence that proves the presence of two
cameras in the middle of a road in a rural area, without specifying a priori the ownership of the
land.

It also provides documentary evidence of a camera installed on the side of
a tree focusing on private space without just cause.

Photograph of the new cameras (the two white balls) in the chest below
from the solar panel, taken from our farm the day they appeared (01/25/20). I know
appreciate the closure of our farm with wire and the path we travel to
enter and exit our farm.

SECOND. On 03/23/20, the claim is TRANSFERRED to the
denounced so that he could allege what he deemed appropriate in law.

THIRD. On 07/15/20, a written statement was received from the defendant

stating the following:

-The cameras are installed in a single-family home in an outdoor area

landscaped, its purpose being to protect the home from intruders (...).

-It has a total of two cameras being responsible for the installation of

the same.

- Term of conservation of the same: 2 months.

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FOURTH. When the database of this Agency was consulted, there was a Complaint

associated with the procedure with reference number ***PROCEDURE.1, which ended in

the following terms:

“WARN (XXXXXX) Don B.B.B. in accordance with the provisions of article

45.6 of Organic Law 15/1999, of December 13, on Data Protection of

Personal Character, in relation to the complaint for violation of article 6.1 of the

LOPD, typified as a SERIOUS infringement in article 44.3 b) of the aforementioned Law

Organic”

FIFTH. On November 5, 2020, 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.

SIXTH: On 03/10/21, a resolution proposal is issued in which it is considered

accredited the commission of the infringement of articles 5.1 c) and e) RGPD, proposing

a respective penalty of €3,000 and €1,000, by having a camera system with

Recording of images for a time greater than that allowed in the regulations.

SEVENTH: On 05/13/21, a response is received from the respondent through the

which shows the following:

“The rationale for the proposal is based on the fact that the cameras are

oriented towards a transit area, pointing out the jurisprudence on the condition

of public of the roads (...)

It is important to note that the corresponding

previous allegations, in which in addition to the cadastral document of my property without

reflection of any public road, old property titles have been provided.

As a consequence of numerous damages to my property, and given the impunity

of not being able to prove the authorship, I find myself in the need to protect the property and the

safety of my family.

It is attached as Doc. No. 1 Complaint of the year 2019 about damage to my

property.

In view of the terms of the Complaint filed (evidence provided) there is no

there is only the necessary file of the sanctioning file that has been initiated against me.

Therefore, the facts actually accredited and occurred are NOT

constituting any infringement. In this regard, the AEPD cannot carry out a

reversal of the burden of proof or assuming that the cameras are on

public road, when the matter is prosecuted, in the same way that the Judge

Instructor in the sentence provided does not do it”.

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

In this proceeding, the following are considered proven facts:

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FACTS

First. On 02/03/20, a claim is received at this Agency through the

which translates as the main fact the following:

"This electronic device is located on the farm of the defendant referenced

in the geographical position of the following coordinates 42° 53' (according to Google Maps) of the

place ***PLACE.1".

Together with the claim, it provides documentary evidence that proves the presence of two

cameras in the middle of a road in a rural area, without specifying a priori the ownership of the

land.

It also provides documentary evidence of a camera installed on the side of

a tree focusing on private space without just cause.

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

cameras Don B.B.B., with DNI ***DNI.1.

Third. It is accredited that the accused retains the personal data

(stored) for a period longer than that legally marked: two

months.

Fourth. There is evidence of the presence of recording devices on land in

dispute between the parties, which has been fenced off by the claimed party, being able to easily

address them at will.

Fifth. There is no type of fabric that limits the fence, which allows the capture

excessive images of anyone who moves freely in the vicinity.

Sixth. There is no evidence that there is a firm judicial pronouncement on the ownership of the

land in question, the controversy being judicialized between the parties.

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

On 02/03/20, this Agency received a claim from the complainant for means of which transfers as main fact the following:

“Installation of a video-surveillance camera on a public road, obtaining images of third party(ies) without just cause” (folio nº 1).

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The facts "are also denounced at the National Police Station

***LOCATION.1 through Certificate No. ***CERTIFICATE.1 accrediting it here manifested (...)".

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 installed systems comply with current legislation, proving that the same comply 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.

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.

Also with this type of device it is not possible to obtain image(s) of space public, as this is the exclusive competence of the Security Forces and Bodies of the Condition.

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, 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 devices for obtaining images of public space, outside the cases allowed in the regulations.

III

In accordance with the evidence available in this proceeding punisher, it is considered that the defendant has proceeded to install a system of cameras, which is oriented towards public space affecting transit areas of third parties, without just cause.

It should be noted that to date there is no firm judicial pronouncement that determines the private ownership of the land.

All this leads us to conclude, taking into account the Mortgage Legislation in force, that the registration title would be the only one enforceable against third parties. Ultimately, it valid is what is contemplated in the Property Registry and not in the Cadastre that does not attest to ownership.

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The installation of cameras is an exceptional measure, and should be weighed conflicting interests, especially when it is not intended to protect a housing and its belongings against hypothetical theft, but are located in the middle of land, between which there is a dispute between the parties.

It is precisely this "dispute" that is the root of the main problem between the parties, consider the claimed that the land is private, while the part claimant (along with other residents of the locality) consider that they are of a public, being therefore municipal competence.

No irrefutable documentary evidence has been provided on this aspect. issued by the corresponding Consistory, especially if, as the parties affirm, the matter is in court, without any pronouncement on the matter on the day of the date.

The foregoing would justify by itself that "ad cautelam" the land remains unchanged, as long as there is no firm judicial pronouncement to the respect, even more so the presence of the cameras can be considered as an element intimidating, away from the claim of family protection wielded by the claimant.

Thus, the measure, far from being "proportionate", is considered excessive, because the mere fencing of the land is sufficient for the protection of the area, being able to the installed cameras carry out a "data processing" on a terrain on whose nature there is no firm judicial pronouncement, giving rise to certain rights that if not confirmed in court, they suppose an unnecessary affectation to the

third party rights.

The presence of the installed devices is for a purpose other than that of
wielded by the claimed party, which is none other than control of the plot, being a
another element to avoid any type of use by third parties, which is considered
unnecessary for the reasons stated.

The known facts constitute an infraction, attributable to the defendant, for
violation of the content of art. 5.1 c) RGPD, previously transcribed.

IV

The defendant states in his pleadings brief (07/15/20) that the term
conservation of the images is 2 months.

“The data will be deleted within a maximum period of one month from its
collection, except when they had to be kept to prove the commission of
acts that threaten the integrity of persons, property or facilities. In that
case, the images must be made available to the competent authority in
within a maximum period of seventy-two hours from the date of knowledge of the
existence of the recording” (art. 22 section 3 LOPDGDD).

The foregoing supposes the commission of an infringement of art. 5.1 e) RGPD that
provides the following:

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“maintained in a way that allows the identification of the interested parties
for no longer than is necessary for the purposes of data processing
personal (...).”

It should be noted that the defendant has been widely warned by this organism in the matter, which supposes at least a negligent conduct in the maintenance of the data beyond what is legally permitted, which justifies the proposal of a sanction encrypted in the amount of €1,000 for the conduct described.

v

The art. 83.5 RGPD provides the following: "Infringements of the provisions following will be sanctioned, in accordance with section 2, with administrative fines EUR 20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, 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, scope or purpose of the processing operation in question, as well such as the number of interested parties affected and the level of damages that have suffered; (art. 83.2 a) RGPD).
- the intent or negligence in the infringement; (art. 83.2 b) RGPD).
- any previous infringement committed by the person in charge or the person in charge of the treatment; (art. 83.2 f) RGPD).

There is a warning prior to the denounced, within the framework of the procedure

***PROCEDURE.1 for installation of a video-surveillance device towards the traffic, ignoring the warnings of this Agency.

The defendant has not accredited the ownership of the land, nor has he contributed in his case images (date and time) that certify in a situation plan what in your case

is protecting, in relation to the home it owns.

So, in relation to the behavior described, a sanction of

€3,000, for the maintenance of a video-surveillance system whose characteristics

has not explained, oriented to the transit area of third parties without just cause,

infringement of art. 5.1 c) GDPR cited above.

For all these reasons, it is considered correct to impose a final sanction encrypted in the

amount of €4,000 (Four Thousand Euros) for the commission of two infractions (art. 5.1 c) and

e) RGPD), as the cameras are affecting the public area, processing data from third parties

without just cause, being a repeat offender in the facts object of the complaint, as well as

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for keeping the images for a period of time longer than legally

established.

Finally, this body must remind the parties of the importance of the

rights at stake, not having to instrumentalize this Agency in continuous disputes

neighbors, on judicialized matters of a civil nature, being advisable to resolve

the same in the opportune instances, avoiding the use of video cameras-

Surveillance as an “intimidating” element or away from the purpose of the same.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE 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 €3,000 (Three Thousand

euros).

SECOND: IMPOSE B.B.B., with NIF ***NIF.1, for a violation of Article

5.1.e) of the RGPD, typified in Article 83.5 of the RGPD, a fine of 1,000 euros

(A thousand euros).

THIRD: ORDER the defendant based on the provisions of article 58.2 d)

RGPD that within 1 month proceeds:

- Withdrawal from the chambers until the civil litigation maintained between the parts.

FOURTH: NOTIFY this resolution to B.B.B..

FIFTH: 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, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

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 on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in 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

voluntary 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.

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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

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

Director of the Spanish Data Protection Agency

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