

□ Procedure No.: PS/00387/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: On July 26, 2019, it had entry in this Spanish Agency of
Data Protection a document presented by Don A.A.A. (hereinafter the
claimant), through which he makes a claim against Don B.B.B. with NIF ***NIF.1
(hereinafter, the defendant), for the installation of a video surveillance system in the
***ADDRESS.1, there being indications of a possible breach of the provisions of
data protection regulations.

The reasons that support the claim and, where appropriate, the documents
provided by the claimant are the following:

A neighbor denounces that in the house located in ***ADDRESS.1, they have put 6
video surveillance cameras that record common areas: the ground floor and public roads.
Accompany photographs of the house and the cameras.

SECOND: Prior to the acceptance of this claim for processing, it is
transferred the claimed, in accordance with the provisions of article 65.4 of the Law
Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of
digital rights (hereinafter, LOPDGDD). The result of this action is
describes below.

The respondent filed a document indicating that he had installed 4 security cameras
video surveillance for the safety of his family, since there have been robberies in the
locality and the house is remote. Presents images of what the cameras record,

adding that camera 3 is not operational. The second-floor neighbor does not live in the housing, since he has a restraining order (he does not provide documentation to the regard). The only one who accesses the images is him, although he only sees them when he has a problem has occurred and presents them to the authorities.

THIRD: The claim was admitted for processing by means of a resolution of 25 October 2019.

FOURTH: On January 7, 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.

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FIFTH: On 01/16/20, a written statement was received from the defendant in the following terms:

"I do not want to commit any illegal action or that violates the Law of Data Protection, I can pay you gasoline expenses because I am a pensioner (...).

However, I enclose in my response two Judgments against A.A.A. (...) the

The second includes a preventive measure of 25 meters with respect to my wife and myself.

It has helped us to be able to demonstrate certain things that if we did not have them, we would not have been possible. These cameras were originally set up due to the robberies that occurred in the town where I live (...) for everything that has happened to us that I present here in a very brief"

“Add that there is NO constituted community and that in this regard I have my woman 55% of the co-ownership, I enclose a page of the deeds that if credited, in case this is of any use”.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

FACTS

First. On 07/26/19, this Agency received a claim from the complainant transferred as main fact the following:

“A neighbor denounces that in the house located in ***ADDRESS.1, they have put 6 video surveillance cameras that record common areas: the ground floor and public roads. Accompany photographs of the house and the cameras.

Second. The resident of the locality, Don B.B.B., which acknowledges the installation of at least four cameras.

Third. He states that he maintains a bad relationship with the complainant, pointing out the existence possession of various criminal behaviors, as well as pending lawsuits with the same, providing the following as evidence:

-Copy of AP Judgment Section No. 3 (León) dated XX/XX/XXXX.

Fourth. It has not been possible to verify what is observed with the system in question. tion, by not providing a screen impression of what is recorded or displayed.

Fifth. It does not appear accredited as it does not provide any evidence that the accused has informative poster, adapted to the regulations in force.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

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

Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the

LOPDGDD, the Director of the Spanish Data Protection Agency is competent

to start and solve this procedure.

II

The physical image of a person, in accordance with article 4.1 of the RGPD, is a

personnel and their protection, therefore, is the subject of said Regulation. In article 4.2

of the RGPD defines the concept of "treatment" of personal data.

It is, therefore, pertinent to analyze whether the processing of personal data (image

natural persons) carried out through the video surveillance system denouncing

ciated is in accordance with the provisions of the RGPD.

III

Article 6.1 of the RGPD establishes the assumptions that allow it to be considered lawful

the processing of personal data.

For its part, article 5.1.c) of the RGPD, regarding the principles of processing

to, provides that the personal data will be "adequate, pertinent and limited to what is

necessary in relation to the purposes for which they are processed ("minimization of

data")." This article enshrines the principle of data minimization in the treatment

of personal data. It assumes that said treatment is adjusted and proportional to

the purpose to which it is directed, and the processing of excessive data must be restricted.

you or proceed to delete them.

The relevance in the treatment of the data must occur both in the

the collection of the data as well as in the subsequent treatment that is carried out on the same.

mos.

On the other hand, in accordance with the provisions of article 22 of the LOPDGDD, referring specifically to the "Processing for video surveillance purposes", the treatment of images in public places can only be carried out -if applicable and pre-saw compliance with the legally enforceable requirements-, by the Forces and Bodies of Security, unless the exception established in the aforementioned article 22 operates of the LOPDGDD for individuals or legal entities, public or private, respecting do the conditions required in said article.

On some occasions, the protection of private spaces is only possible if the cameras are located in spaces such as facades. Sometimes it is also necessary

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ary to capture the accesses, doors or entrances, so that, although the camera is inside the building, it is impossible not to record a minimal and important part dispensable from the public road, which is inevitably captured.

In order for this exception on the protection of private spaces to apply, cable, there shall be no alternative installation possibility. In these cases, the responsible for the treatment carried out through cameras will adapt the use of the so that the impact on the rights of third parties (passers-by) is minimal. mo possible. In no case will the use of surveillance practices be admitted beyond the environment object of the installation, not being able to affect the surrounding public spaces. contiguous buildings and vehicles other than those accessing the guarded space.

IV

In accordance with the above, the treatment of images through a system

subject of video surveillance, to be in accordance with current regulations, you must comply with the following requirements:

- Respect the principle of proportionality.

- When the system is connected to an alarm center, you can only

be installed by a private security company that meets the requirements

established in article 5 of Law 5/2014 on Private Security, of April 4.

- The video cameras will not be able to capture images of the people who are

outside the private space where the video surveillance system is installed.

since the treatment of images in public places can only be carried out,

unless there is government authorization, by the Security Forces and Bodies.

Nor can spaces owned by third parties be captured or recorded without the consent

ment of their owners, or, where appropriate, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the

protection of private spaces, where cameras have been installed on facades or in the

inside, it may be necessary to ensure the security purpose the recording of

a portion of the public road. That is, cameras and camcorders installed with fi-

security officers will not be able to obtain images of public roads unless it is im-

dispensable for said purpose, or it is impossible to avoid it due to the location of

those and, extraordinarily, the minimum space for said financing will also be collected.

ity. Therefore, the cameras could exceptionally capture the minimum portion-

mind necessary for the intended security purpose.

- The duty to inform those affected provided for in the articles must be complied with.

12 and 13 of the RGPD, resulting from application -by not contradicting the provisions of the

aforementioned Regulation-, the manner provided for in article 3 of Instruction 1/2006, of 8

of November, of the Spanish Agency for Data Protection, on the Treatment

of Personal Data for Surveillance Purposes through Camera Systems or Videochambers.

Specifically, at least one distinction must be placed in video-monitored areas.

informative display located in a sufficiently visible place, both in open spaces

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as closed, which will identify, at least, the existence of a treatment, the

identity of the person in charge and the possibility of exercising the rights foreseen in said

precepts. Likewise, the information must be kept available to those affected.

to which the aforementioned RGPD refers.

- The person in charge must keep a record of treatment activities

carried out under its responsibility, including the information to which it makes

reference article 30.1 of the RGPD.

- The installed cameras cannot obtain images from private space of

third party and/or public space without duly accredited justified cause, nor can

affect the privacy of passers-by who move freely through the area. It's not per-

mitigated, therefore, the placement of cameras towards the private property of neighbors with

the purpose of intimidating them or affecting their private sphere without just cause.

- In no case will the use of surveillance practices beyond the en-

object of the installation and in particular, not being able to affect the public spaces

surrounding spaces, adjoining buildings and vehicles other than those accessing the space.

guarded man

In relation to the foregoing, to facilitate the consultation of interested parties, the Agency

Spanish Data Protection Agency offers through its website

[<https://www.aepd.es>] access to legislation on personal data protection

regulations, including the RGPD and the LOPDGDD (section “Reports and resolutions” / “normative”), as well as the Guide on the use of video cameras for security and other finances.

ities, as well as the Guide for compliance with the duty to inform (both available in the “Guides and tools” section).

It is also of interest, in case of carrying out data processing of low risk, the free tool Facilita (in the “Guides and tools” section), which through specific questions, it allows to assess the situation of the person in charge aspect of the processing of personal data that it carries out, and where appropriate, generate diverse documents, informative and contractual clauses, as well as an annex with indicative security measures considered minimal.

v

The corrective powers of the Spanish Protection Agency of Data, as a control authority, are established in article 58.2 of the RGPD. In- Among them are the power to sanction with a warning -article 58.2 b)-, the power to impose an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the controller or processor that the treatment operations comply with the provisions of the RGPD, when appropriate, in a certain way and within a specified period -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article Article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

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Without prejudice to the provisions of article 83 of the RGD, the aforementioned Regulation has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation with what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than a sanction. tion by means of a fine, a warning may be imposed. must, however, lend special attention to the nature, seriousness and duration of the infringement, its character intentional, to the measures taken to alleviate the damages suffered, to the degree liability or any relevant prior violation, to the manner in which the authority control authority has become aware of the infraction, compliance with measures measures ordered against the person in charge or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

In accordance with the evidence available in this proceeding, sanctioning procedure, it is considered that the defendant has a video camera installed outside your home, with the ability to obtain images of areas common property.

SAW

The reason for verifying the administrative infraction is summarized in the orientation of the cameras, as well as in the insufficient explanations given by the complaint-do, unaware as manifest of the matter of data protection.

The facts constitute an infraction, attributable to the defendant, for violation of the content of art. 5.1 c) GDPR, cited above.

Article 83.5 letter a) RGD provides the following:

“Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, alternatively, being from a company, of an amount equivalent to a maximum of 4% of the volume overall annual total turnover of the previous financial year, opting for the higher amount:

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

For the purposes of the limitation period for infractions, the infraction indicated in the previous paragraph is considered very serious and prescribes after three years, in accordance with Article 72.1 of the LOPDGDD, which establishes that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established established in article 5 of Regulation (EU) 2016/679.

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In the present case, it is taken into account that it is an individual without infringing accredited previous training in this Agency, as well as that he has made allegations about the devices in question, having to correct the recording angle of a camera ra, considering concluding the procedure with a proposal for a Warning.

7th

In the present case, having analyzed the allegations put forward, it can be concluded that the announced has a system of video-surveillance cameras, installed for reasons of security, serving the images of the same as a means of proof of the presuppositions these criminal conducts, in the present case of the complainant.

Since it seems that there is legal litigation between the parties, it will be case in this context where the appropriate allegations should be made, in the In the event that the images have been provided to the competent Court due to the ma- would.

The allegations of the accused party are insufficient to decree the Ar- subject of the procedure, opting in the present case for a mere Warning.

It is taken into account that the complainant may have committed "criminal" conduct. tives" against the defendant and members of his family, justifying the installation of the cameras for personal security reasons.

This body has already spoken on several occasions about the fact that a restrictive interpretation of the norm can suppose a double punishment for the victim of uncivic conduct, by not being able to prove the probable author of the same; given the seriousness of the behaviors analyzed in court (e.g. crime of threatening zas), it is considered correct to maintain the camera system, since they fulfill a preventive function of new criminally and administratively reprehensible acts, which their main protagonist is the complainant himself: Mr. A.A.A.

The removal of the camera(s) may lead to a defenseless situation of the denounced and his family, who would be at the mercy of new uncivic or veri- affected by criminal acts of greater depth.

The foregoing does not imply that the complainant does not have any rights, although are limited by their own actions, which have been declared contrary to the guidelines minimum coexistence, which justifies having to put up with the cameras being

oriented towards the main points of conflict, except for a judicial resolution to the contrary.

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In case of doubt, the defendant can request guidance at the post of the

Civil Guard closest to the place where you reside or hire the services of a

technical professional to properly install the camera system, at a cost

minimum or prove that it complies with current legislation.

So that the defendant can maintain the camera system, although

complying with its legal requirements, that is, the cameras must be oriented

in principle towards their particular property, only exceptionally can they be oriented

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move towards public/private space or even be hidden in order to prove the res-

responsibility for alleged uncivic or criminal conduct.

It must also have an approved sign adapted to the new regulations.

goes, indicating that it is a video-monitored area.

Finally, the parties are warned that this body will not assess

litigation issues or the evidence provided to support their claims at the headquarters

court, and it must be in the appropriate judicial instances where they must settle their

personal issues.

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 Don B.B.B., with NIF ***NIF.1, for a violation of Article

5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a sanction of Warning

I lie.

To this end, within ONE MONTH from the notification of this act, de-

must prove the following:

-Installation of the system in accordance with the regulations in force, through the corresponding pending technical report.

-Accreditation of availability of informative poster adapted to the regulations of data protection in force.

SECOND: NOTIFY this resolution to the defendant Mr. B.B.B. and INFO-

MAR of the result of the actions to the complainant Mr. A.A.A.

In accordance with the provisions of article 50 of the LOPDGDD, the

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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

Following the notification of this act, as provided in article 46.1 of the aforementioned

Law.

Sea Spain Marti

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