

□ File No.: EXP202104047

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (*hereinafter, the claiming party) dated October 27, 2021

filed a claim with the Spanish Data Protection Agency. claims her-

tion is directed against MIRACLE IBIZA S.L. with NIF B07902018 (hereinafter, the part

claimed). The reasons on which the claim is based are the following:

“The company MIRACLE IBIZA S.L. has installed a video surveillance system
that threatens the privacy of Mr. A.A.A., due to the fact that the camera(s) focus on the
entrance to his home, recording him and all the individuals who access the
itself”—folio no. 1-..

Together with the notification, documentary evidence is provided that supports the statements.
petitions of the complaining party (Annex I).

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

December, Protection of Personal Data and guarantee of digital rights (in
hereafter LOPDGDD), said claim was transferred to the party claimed on fe-
date 10/29/21 and 12/27/21, to proceed with 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.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of
October 1, of the Common Administrative Procedure of Public Administrations
cas (hereinafter, LPACAP), was legally notified, as stated
accredited in the administrative file.

On 01/21/21, this Agency received a written response indicating how

succinctly the following:

“Between the two properties there is a great conflict referring, precisely, to

the boundaries of the farms, as well as the ownership/use of the private access road.

cease to both farms. There are countless civil legal proceedings open in

in this sense, as well as criminal proceedings for crimes of threats, coercion,

injuries and injuries, perpetrated by the adjoining company and some of its workers mandated

two for this one.

My principal does NOT have any camera installed on said farm. my client

It has only 1 camera, installed on its own farm, which points to the access door.

access to your home, as will be shown.

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In this regard, this party wishes to inform you that precisely the person

who has filed the complaint-claim with your Agency against my principal, it is

who has given orders to his workers to harm him, specifically starting

the poster continuously, tearing it up and making my client have to pay

continuously use quantities to replace said poster.

The camera attached is an animal observation hunting camera. The camera

You have the option of engraving or photography. It also allows you to choose between video quality

deo/photography. The camera is powered by BATTERIES, and has a card (maximum)

32 GB, where the photos taken are stored. The camera is only activated

by sensors, which have a range of about 3 meters. In addition, it has 3 senso-

res, which can be disabled in whole or in part.

This part communicates and states that it is going to proceed to formulate a complaint-of-complaint for the (5) cameras that the neighbor has illegally installed, on his property and owned by others, who fail to fully comply with the Protection regulations of applicable data, since (...).

My client has not been able to respond to your requirements before, since has been absent from Spain for several months, to his hometown in Germany, and has not there was no one in charge of the property to be able to access to carry out the investigations and photographs required (...).

THIRD: On January 27, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On May 19, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, 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 te, LPACAP), for the alleged infringement of Article 5.1.c) of the GDPR, typified in the Article 83.5 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), the claimed party submitted a written of allegations (06/13/22) in which it is limited to presenting a Writ of Appearance in Court of First Instance No. 1 (Ibiza) without further explanation in this regard.

SIXTH: On 06/13/22, a written statement of allegations was received from the party claimed in who provides a copy of the document sent to the Court of First Instance No. 1 (Ibiza) in the framework of PO 44/2022 by which he appears before it as an "interested" party, without further explanation in this regard about the facts that are the object of transfer of this

organism.

SEVENTH: On 08/08/22, the "Proposal for Resolution" is issued, in which the considers the presence of a wrongly oriented device accredited, infringing the article 5.1 c) GDPR, reason for which a penalty amounting to €500 was proposed, according to the circumstances described.

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

PROVEN FACTS

First. The facts bring cause of the claim of entry date 10/27/21 by through which the following facts are transferred:

“The company MIRACLE IBIZA S.L. has installed a video surveillance system that threatens the privacy of Mr. A.A.A., due to the fact that the camera(s) focus on the entrance to his home, recording him and all the individuals who access the itself”—folio no. 1-..

Along with the notification, documentary evidence is provided that supports the statements of the complaining party (Annex I).

Second. The entity Miracle Ibiza S.L., with NIF B07902018.

Third. The claimed party has not provided a sufficient explanation of the system issue of installed cameras, nor the reasons for the installation, beyond influencing the bad relations between the parties and the various conflicts between them, confirming the

presence of a device as a camera for hunting purposes.

Room. Based on the evidence provided, it has been proven that the gross misdirection of cameras installed without just cause affecting the rights of third parties who are intimidated by them.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation (EU) 2016/679, hereinafter GDPR), grants each authority of control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulations comments dictated in its development and, insofar as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

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In the present case, the claim dated 10/27/21 is examined by means of gave from which the following is transferred as the main fact:

"The company MIRACLE IBIZA S.L. has installed a video surveillance system

that threatens the privacy of Mr. A.A.A., due to the fact that the camera(s) focus on the entrance to his home, recording him and all the individuals who access the itself”—folio no. 1-..

The art. 5.1 c) GDPR provides the following: Personal data will be:

“adequate, relevant and limited to what is necessary in relation to the purposes for those who are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed felled comply with current legislation, certifying 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 poster tive, indicating the purposes and person 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 to intimidate neighboring neighbors with this type of device, as well as control areas nas of transit of the same without justified cause.

Neither with this type of device can you obtain an image(s) of public space. since this is the exclusive competence of the Security Forces and Bodies of the State tado.

It should be remembered that even if it is 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, who are intimate measured by it 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 and/or traffic of third parties, outside the cases allowed in the normative.

The purpose of this type of device must be the security of the property and

its inhabitants, avoiding the affectation of the rights of third parties who are intimidated

two with the same

II

In accordance with the extensive evidence available in the proceeding disciplinary action, it is considered that the claimed party has a bad camera oriented affecting the right of third parties, who are affected by it in their usual chores.

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The evidence provided allows us to verify indications of a bad orientation of a device with the possibility of obtaining images over a conflict zone between the parties, excluded from their private ownership, affecting a zone of free transit, without having clarified the ownership of it and the cause (reason) of the presence of a hunting camera with automatic detection of movements.

The claimed party is responsible for the installation of the system, and must, even if you reside outside Spanish national territory, have an effective address at available to the competent authorities, having to support any reason(s) you deem legitimate for the presence of the camera(s) with documentation necessary for its analysis by this Agency.

The known facts constitute an infringement, attributable to the party claimed, for violation of the content of article 5.1 c) GDPR, previously cited do.

IV.

The art. 83.5 GDPR provides the following: "Violations of the following provisions

These will be penalized, in accordance with section 2, with administrative fines of 20

000 000 EUR maximum or, in the case of a company, an equivalent amount

to a maximum of 4% of the overall annual total turnover of the financial year

previous year, opting for the one with the highest amount:

a) The basic principles for the treatment including the conditions for the

consent in accordance with articles 5,6,7 and 9 (...)".

In accordance with the foregoing, it is considered correct to impose a penalty of €500,

having a poorly oriented video surveillance device, visible from the outside

above, affecting the rights of third parties passing through the area, although it is taken into account

The initial collaboration with this Agency counts, a sanction located on the lower scale

for this type of behavior.

The obvious bad orientation of the device in question makes us consider the

conduct as negligence at least serious, when being aware of the disturbance to the de-

right of third parties without just cause, assessing the situation of bad neighborly relations

between them.

V

The text of the resolution establishes which have been the infractions committed and

the facts that have given rise to the violation of the data protection regulations

from which it is clearly inferred what are the measures to be adopted, without prejudice to

that the type of procedures, mechanisms or concrete instruments to implement

treat them corresponds to the sanctioned party, since it is the person responsible for the treatment who

fully knows your organization and has to decide, based on personal responsibility

active and risk-focused, how to comply with the GDPR and the LOPDGDD.

The parties are reminded of the importance of the rights at stake, and must

avoid using this Agency for issues of bad neighborly relations, de-

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where appropriate, settle disputes between them before the competent authorities.

systems, making use according to its purpose of the video-surveillance systems installed sides.

Therefore, in accordance with the applicable legislation and assessed the graduation criteria tion of the sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE MIRACLE IBIZA S.L., with NIF B07902018, for an infraction of Article 5.1.c) of the GDPR, typified in Article 83.5 a) of the GDPR, a fine of €500.

SECOND: TO ORDER the claimed party so that, within 15 business days counting from the day following the notification of this act, proceed as follows: following way:

-Reorientation or removal of the device providing reliable proof of such ex-before this Agency (eg photograph with date and time), in such a way that it can be verify that the same (s) is only oriented to land exclusive to its ownership.

THIRD: NOTIFY this resolution to the entity MIRACLE IBIZA S.L..

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article art. 98.1.b) of Law 39/2015, of October 1, on Co-Administrative Procedure public administrations (hereinafter LPACAP), within the term of payment volunteer 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, by means of its income, 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, open in the name of the Spanish Agency
ñola of Data Protection in the bank CAIXABANK, S.A.. In case of
Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date 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 or immediately following business month, and if
between the 16th and the last day of each month, both inclusive, the payment period is
It will run until the 5th of the second following or immediately following business month.

In accordance with the provisions of article 50 of the LOPDGDD, this
Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process in accordance with art. 48.6 of the
LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the interested parties

Respondents may optionally file an appeal for reinstatement before the Director
of the Spanish Agency for Data Protection within a period of one month from the
the day following the notification of this resolution or directly contentious appeal
before the Contentious-Administrative Chamber of the National Court,

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in accordance with the provisions of article 25 and section 5 of the additional provision
fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administration, 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 noted 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-

As the case may be, the interested party must formally communicate this fact in writing

addressed to the Spanish Data Protection Agency, presenting it through the Re-

Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

through any of the other registries provided for in art. 16.4 of the aforementioned Law

39/2015, of October 1. You must also transfer the documentation to the Agency

proving the effective filing of the contentious-administrative appeal. if the

Agency was not aware of the filing of the contentious-administrative appeal

treatment within two months from the day following notification of this

resolution, would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

938-120722

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28001 – Madrid

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