

□ File No.: EXP202210993

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On March 31, 2022, by the Director of the Spanish Agency
of Data Protection, a resolution was issued in the sanctioning procedure of the
file number EXP202102834, filed against A.A.A. (hereinafter, the part
claimed). In said resolution, in addition to sanctioning with the imposition of a fine,
required the adoption of the following measures:

SECOND: TO ORDER A.A.A., with NIF ***NIF.1 that, by virtue of article 58.2.d)
of the GDPR, within ten business days, take the following measures:

- Evidence of having proceeded to remove the camera from the current location, or to
reorientation of it towards its particular area or that does not imply a recruitment
disproportionate.

SECOND: The resolution of the disciplinary procedure was notified
reliably on April 20, 2022 to the claimed party, granting him the
period of 10 business days for the adoption of the imposed measures, as stated
certified in the file.

THIRD: After the indicated period has elapsed without this Agency having
received any writing on the measures implemented by the claimed party, and
having received on June 16 and 17, 2022 two letters, with numbers of
register REGAGE22e00024816454 and REGAGE22e00024995857, in which the part
complainant communicated that the non-compliance persisted, they proceeded to request
back to the claimed party so that, within ten business days, they can prove

before this Agency to have adopted the appropriate corrective measures, in attention to the agreed in the aforementioned Resolution.

This requirement was collected by the person in charge on July 1, 2022, as it appears in the postal certificate that is in the file.

FOURTH: On July 19, 2022, the claimant, in writing with the number of registration REGAGE22e00031320587, again refers to non-compliance with the measures imposed on the defendant.

FIFTH: A letter is received from the claimed party with registration number REGAGE22e00031443884 dated July 20, 2022, in which it indicates that the camera adapts to current regulations and attached as evidence the sentence handed down on the procedure of minor crimes 208/2021 of the Court of First Instance and Instruction nº1 of San Fernando.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/11

The sentence provided is favorable to the party claimed for not concurring the legally required elements to appreciate the existence of the minor crime of duress. The non-compliance of the elements of the type of the minor crime of coercion does not affect the concurrence of the elements of the administrative offense sanctioned by this Agency, from which the imposition of measures derives. For other part, regarding the proven facts of the aforementioned sentence, it is not indicated that the camera conforms to the regulations in question, but during the process it has not been proven otherwise. In addition, it is pointed out that the camera focuses on the house of the complaining party.

Thus, in said judgment the following is stipulated:

"In the present case, the placement of the camera by the defendant does not prevent the complainant carry out her activities, since the installation of the security camera security, recognized by both parties to the lawsuit, does not prevent you from accessing or leaving your housing, carry out tasks within it or carry out activities abroad. In

In this sense, it should be noted that the complainant does not mention that the camera has limited the normal development of his life, but rather that the complainant is aware of people entering or leaving your home. This fact, without prejudice that it may bother you that a camera focuses on your home, it does not hinder the exercise of the complainant's right to liberty, therefore one of the elements of the legally required criminal type.

Furthermore, the illegal nature of the security camera has not been proven in the act of trial, given that the defendant proclaims the legality of the installation of the aforementioned camera, and the complainant must be the one to provide evidence that undermines it. In this sense, Ms. B.B.B. has limited itself to exposing the existence of the camera providing images recorded by said camera, without provide evidence that proves that its placement does not meet the legal requirements."

Therefore, not considering this Agency that the adequacy to the data protection regulations, it is agreed to request the party again claimed so that, within ten business days, prove to this Agency the compliance with the imposed measures.

This new requirement was collected by the person in charge on September 21 of 2022, as stated in the Postal certificate that is in the file. About this new requirement, no response has been received.

SIXTH: On September 15, 2022, the claimant, in a new letter with

registration number REGAGE22e00040411959, report the breach again

by the party claimed of the measures imposed.

SEVENTH: Against the aforementioned resolution, in which the adoption of measures is required,

There is no ordinary administrative appeal due to the expiration of the deadlines

established for it. Likewise, the interested party has not expressed his intention to

file a contentious-administrative appeal, nor is this Agency aware that

the same has been filed and a precautionary suspension of the

resolution.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/11

EIGHTH: On November 7, 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 (in

hereafter, LPACAP), for the alleged infringement of Article 58.2 of the GDPR, typified in

Article 83.6 of the GDPR Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter GDPR).

NINTH: The aforementioned initiation agreement was collected by the claimed party on the 25th

November 2022, as stated in the acknowledgment of receipt in the file.

TENTH: Dated December 1, 2022 and entry registration number

REGAGE22e00055577403, the claimed party submits a written statement of allegations to the

initiation agreement, in which he states that the farm is his property, having

left a part for the enjoyment of the claiming party that has a requirement of

eviction, has been sanctioned by the San Fernando City Council and reported to Tax Treasury for tax fraud.

It also declares that the security camera has been installed by the company Prosegur and is placed in compliance with legal requirements. Likewise, I don't know It's not a public road, but it's all a private estate where only the family unit of the claimed party, the claimant not residing therein.

Along with said letter, provide DNI, certificate of collective registration and note simple of the San Fernando Property Registry.

ELEVENTH: On December 20, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency impose a fine of 600.00 euros on the claimed party.

TWELFTH: Dated February 23, 2023 and entry registration number REGAGE23e00011309312, the defendant submits a written statement of allegations to the motion for a resolution stating that the installation of the security camera Video surveillance has been adjusted at all times to what is determined in the guide of this Agency on the use of video cameras for security and other purposes. He affirms that the video surveillance camera is installed on the outside of a facade of a property in which images of the exterior could be captured and that were applied the provisions of the GDPR in the terms described in the aforementioned guide, regarding the Installation of video surveillance systems in single-family homes.

It goes on to point out that when the cameras are connected to the central reception of alarms, said services can only be provided by companies of private security that meet the requirements established in Law 5/2014, of 4 April, holding these responsible status. Prosegur proceeded to installation of the video surveillance system and, in the place of access to the area of video surveillance and in a visible way, an informative sign was placed that access to

a video surveillance area.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/11

It indicates that the origin of the complaint lies in disagreements with the owner of the adjoining farm, which would be the reason for the initiation of this file, having used channels of an administrative or coercive nature for shady, spurious and malicious.

On the other hand, it asserts that the sanction proposal has not entered into evaluation in any moment if the initiation of this disciplinary procedure was justified in purity and that the principle of presumption of innocence prevents imputing an infraction administration when proof of charge has not been obtained and verified accrediting the facts that motivate the imputation or of the intervention in the same as the alleged offender.

In the same way, that the presumption of innocence must govern the disciplinary system and that the exercise of the *ius puniendi* is conditioned to a contradictory procedure in which one's own positions can be defended.

Ensures that there is a lack of justification in the initiation of the file sanctioning, since with the contract provided it would already comply with the standards and requirements of the GDPR, regarding the principles of liability and proportionality, there being no illegal or uncontrolled installation of security elements in the property, which would deny and distort the tendentious and malicious.

Finally, it appreciates a lack of proportionality in the proposed sanction,

considering it disproportionate and inadmissible, which would mean its nullity, and requires the sufficient motivation of the reasons on the basis of which the sanction is graduated, explaining the concurrent circumstances that occurred in the specific case.

The following documents are provided, as stated in the allegations document:

1. Movistar Prosegur contract and mandatory installation certificates for the camera of video surveillance.
2. Photographs of the signs indicating the installation of security cameras. video surveillance and installer security company.
3. Photographs of the visual range of the video surveillance camera
4. Copy of the simple note of the Property Registry 2 of San Fernando, on the farm XXXX.
5. Copy of the simple note of the Property Registry 2 of San Fernando, on the farm XXXX.
6. Copy of the Assignment contract of the Property for the use of said plot for the keep riding
7. Copy of the Judgment of the Court of First Instance and Instruction No. 1 of San Fernando acquitting Don C.C.C. of the crime of coercion. for a complaint filed by his sister B.B.B. within "bad neighbor relations".
8. Copy of the Municipal Urbanism Management-Planning and Management Service Urban Planning, on the geolocation of the farm where the service of video surveillance. And where the adjoining with the B.B.B. farm is evident.
9. Photographs where it is evident that the place subject to video surveillance reaches road owned by Don C.C.C.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST:

The resolution of the disciplinary procedure of the file EXP202102834 and the requirements for compliance with the measures imposed in the same indicated in the antecedents first, second, third and fifth were notified by postal mail, in accordance with the provisions of article 42 of the LPACAP. Said resolution became firm and executive due to the expiration of the terms provided for the filing of the resources indicated therein.

SECOND: The claimed party did not send a response to this Agency that accredits the compliance with the measures imposed, namely: the removal of the camera from the place current, or to the reorientation of this towards its particular area or that does not suppose a disproportionate uptake.

THIRD: Notification of the agreement to start this procedure penalty was carried out by postal mail, being collected by the claimed party with dated November 25, 2022.

FOURTH: The claimed party has presented allegations to the agreement to initiate this disciplinary procedure as stated in the tenth antecedent.

FIFTH: The notification of the proposed resolution was received by the party Claimed on January 19, 2023.

SIXTH: The claimed party has submitted allegations to the proposed resolution of this disciplinary procedure included in the twelfth precedent.

FUNDAMENTALS OF LAW

Yo

Competence

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

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

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/6

Arguments to the Commencement Agreement

II

In response to the allegations to the agreement to initiate this file submitted by the claimed party, the following should be noted.

In the judgment of the Court of First Instance and Instruction No. 1 of San Fernando the installation of the security camera and the recording of all the people who circulate in the area where it focuses on the following terms:

"However, and despite the aforementioned bad relationship between the parties to the lawsuit,

the other two guiding requirements concur, since the complainant recounts in a

The facts in the report and in court are similar, being a credible account and

congruent, that D.C.C.C. have placed a surveillance camera and have

Knowledge of the people who travel through the lane and of those who access the

House of Mrs. B.B.B..

The images in the records, which have not been challenged by the party

contrary, they accredit the placement of the camera and the images recorded by it.

In the trial, the defendant's statement has been used as exculpatory evidence.

D.C.C.C. acknowledged that he had installed a security camera, which has been

installed by the Prosegur company and is placed in compliance with legal requirements.

Likewise, it admits that the aforementioned camera records the people who circulate through the

lane.

This acknowledgment of the facts in the act of hearing ratifies what was stated by the

complainant, regarding the installation of the camera and the recording of the people

who pass through the lane.

For this reason, and given that the declarations of the parties to the process coincide,

the installation of the security camera and the recording of all the

people who circulate in the area where it focuses."

Likewise, it does not provide any document that distorts the facts proven in the

resolution of the disciplinary procedure EXP202102834 where the claimed party

he had already claimed that the lane was his property. Specifically, it collected

following:

"FIRST: Installation of a video surveillance camera outside the property

located at ***ADDRESS.1, which could be capturing images of a driveway

public transit. The claimant provides several screenshots in which

he observes the access road and the entrance door to his farm, appearing in the same identifiable persons.

SECOND: The defendant states that the video surveillance camera is oriented only towards the ceded farm and a road, but that lane is his property.

He provides a photograph in which it can be seen that the camera captures part of the farm and the

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/11

path that claims to be private, but after analyzing the documentation it cannot be accurately determine that that portion of land is within your property.”

The informative notes of domain and loads presented include the description of the farm 3725 and 3694 of San Fernando, where there are several owners with different percentages of full ownership of the property, including an S.L. and an S.L.U., for which it is not possible to clearly identify whether the lane that the complained party claims to be from your property does not belong to any of the other owners, nor is it

You can determine the specific farm to which it belongs with the data provided.

Likewise, the fact that the claimant is not registered on the farm, does not prevents him from eventually residing, so it could not be considered tested in this way that the aforementioned lane that focuses the camera is of its property.

On the other hand, against the decision handed down in the sanctioning procedure of the file number EXP202102834, in which the adoption of measures is required, not

There is no ordinary administrative appeal due to the expiration of the deadlines established for it. Likewise, the interested party has not expressed his intention to

file a contentious-administrative appeal, nor is this Agency aware that the same has been filed and a precautionary suspension of the resolution. Therefore, the aforementioned resolution is final because it was consented to by the expiration of the terms, and therefore fully enforceable.

Allegations to the Resolution Proposal

II

In response to the allegations presented by the defendant to the proposal for resolution, the following should be noted.

Hiring an external video surveillance service, installing cameras by a third party or contracting a security or maintenance service does not exempt to the claimed party of compliance with data protection regulations, not constituting sufficient proof of compliance in this matter the contracting of these services, and must also be indicated in relation to the placement of the poster, that it is not the object of this procedure to comply with the provisions regarding the right to information through the installation of an informative badge.

Likewise, it should be noted that procedures of a sanctioning nature are initiated always ex officio, as stipulated in article 63 of law 39/2015 of October 1, of the Common Administrative Procedure of Public Administrations (LPACAP).

Therefore, both the disciplinary procedure of file number EXP202102834 where the measures were imposed, such as the current procedure filed for non-compliance with the same, have been substantiated for violations of data protection regulations, apart from, as claimed by the defendant, other disagreements with the owner of the adjoining property outside the powers of this Agency.

Regarding the allegation that the sanction proposal has not entered into an assessment of whether the initiation of the disciplinary procedure was justified, as well as that it has not been

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/11

evidence obtained and verified, it is emphasized that the procedure current sanctioner brings his cause in the breach of an executive resolution, even after being required to do so repeatedly. The start agreement this sanctioning procedure specified the facts that motivated the initiation, its possible qualification and the sanction that may correspond, as well as the rest of the information that is regulated in article 64 of the LPACAP.

In the same way, the documents and images provided, many of which are already had been presented previously, do not justify that the removing the camera from the current location, or reorienting the camera to your area particular or that does not imply a disproportionate capture, but that they are maintained, therefore, it can be concluded that the measures ordered in the resolution of file EXP202102834.

In short, the party claimed with these arguments is defending the conformity of the video surveillance installation in its current terms, discussing the grounds for which the infraction was declared and the sanction was imposed in the procedure EXP202102834. As it is an executive resolution, it is not allowed that the person in charge now raises reasons for opposition related to the validity of the itself, arguments that should have been raised against said resolution in the deadlines set for it. On the other hand, no appeal for reversal was filed or went to court once the decision was correctly notified disciplinary action, acquiring firmness and proceeding therefore its execution in the

terms set forth therein.

Finally, when deciding the amount of this fine, the individual case has been assessed so that it is proportionate, and at the same time effective and dissuasive, taking into account the nature, seriousness and duration of the infringement, as provided in article 83 of the GDPR. The infraction that motivates this procedure is typified in section 6 of said article, attributing the maximum limit of 20 million euros provided by the GDPR for the most serious infringements. By For its part, the LOPDGDD qualifies said infraction as very serious, in order to grant it the maximum prescription period (3 years). The legislator's options are linked to the fact that compliance with the resolutions of the control authorities It represents a basic foundation for the control function of the application of the Regulation and to enforce it, through the effective exercise of the powers corrective measures provided in article 58.

IV.

breached obligation

Based on the available evidence, it is considered that the party claimed has breached the resolution of the Spanish Data Protection Agency in relation to the measures imposed on him.

Therefore, the facts described in the "Proven Facts" section are considered constituting an infringement, attributable to the claimed party, for violation of the Article 58.2.d) of the GDPR, which provides the following:

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

"2. Each control authority will have all the following corrective powers

indicated below:

(...)

d) order the person in charge or person in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;"

Classification and classification of the offense

V

This infringement is typified in article 83.6 of the GDPR, which stipulates the following:

"Failure to comply with the resolutions of the control authority under article 58, section 2, will be penalized in accordance with section 2 of this article with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, opting for the highest amount."

For the purposes of the limitation period for infringements, the alleged infringement prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as the following behavior is very serious:

"m) Failure to comply with the resolutions issued by the authority for the protection of competent data in exercise of the powers conferred by article 58.2 of the Regulation (EU) 2016/679."

SAW

sanction imputed

In accordance with the facts exposed, it is considered that it is appropriate to impute a sanction to the party claimed for the violation of article 58.2 of the GDPR typified in the article 83.6 of the GDPR. The sanction to be imposed is a fine. administrative.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the GDPR. In Consequently, the sanction to be imposed must be graduated according to the criteria established in article 83.2 of the GDPR, and with the provisions of article 76 of the LOPDGDD, with respect to section k) of the aforementioned article 83.2 of the GDPR. It is appreciated that no mitigating or aggravating circumstance is applicable.

VII

adoption of measures

This Agency agrees to impose on the controller the adoption of appropriate measures to adjust its performance to the regulations mentioned in this act, in accordance with the established in the aforementioned article 58.2 d) of the GDPR, according to which each authority of control may “order the person in charge or person in charge of the treatment that the

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/11

processing operations comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period...”.

It is noted that not meeting the requirements of this body may be considered as an administrative offense in accordance with the provisions of the GDPR, classified as an infraction in its article 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

Therefore, in accordance with the applicable legislation, the Director of the Agency Spanish Data Protection RESOLVES:

FIRST: IMPOSE A.A.A., with NIF ***NIF.1, for a violation of Article 58.2

of the GDPR, typified in Article 83.6 of the GDPR, a fine of 600.00 euros

(SIX HUNDRED euros).

SECOND: REQUIRE A.A.A., with NIF ***NIF.1, so that within 10 days

working days from the notification of this Resolution proves to the Agency the

adoption of the measures ordered in the resolution of the disciplinary procedure

of the file number EXP202102834, that is, that proves having proceeded to the

removing the camera from the current location, or reorienting the camera to your area

particular or that does not imply a disproportionate recruitment.

THIRD: NOTIFY this resolution to A.A.A..

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 Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment period

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, 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 IBAN number: ES00 0000 0000 0000 0000 0000 (BIC/SWIFT Code:

XXXXXXXXXXXX), opened on behalf of the Spanish Agency for Data Protection in

the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its

collection in 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 term

It will be 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 may optionally file an appeal for reversal before the

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/11

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

count 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 for in article 46.1 of the

referred 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

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 through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry 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 registries 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 proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

938-181022

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es