

Procedure No.: PS/00022/2019

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before

CALVADOS 14, S.L., by virtue of a claim filed by Ms. A.A.A. (in

hereinafter, the claimant) and based on the following:

BACKGROUND

FIRST: On September 18, 2018, you have entered this Agency in writing

of Ms. A.A.A. (hereinafter the claimant) communicating the possible violation of the

RGPD, motivated by the processing of data carried out through the installation of

unmarked video surveillance cameras filming people passing by

Calle Ample 24-29 (Barcelona), whose owner is CALVADOS 14, S.L. with NIF

B66616137 (hereinafter the claimed).

Documentary evidence (photograph) is provided that proves the installation of the

video surveillance camera.

SECOND: CALVADOS 14, S.L. was required by this Agency on the 5th and 16th of

November 2018 to certify in the reference file E/07002/2018

that the denounced chamber conformed to current legislation, accrediting such extreme

before this body, without any pronouncement in this regard has been made.

THIRD: On January 29, 2019, 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 art. 83.5 section b)

of the RGPD and qualified as very serious in art. 72.1.c) of the LOPDGDD, being

notified by the Electronic Notification Service Support service and

Electronic Address Enabled on February 9, 2019.

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

of Data in this procedure the following are considered proven facts:

PROVEN FACTS

FIRST: On September 18, 2018, the claimant states that there have been installed unmarked video surveillance cameras filming people who pass through Calle Ample 24-29 (Barcelona), whose owner is CALVADOS 14, S.L. without that neither of the two requests be notified.

SECOND: CALVADOS 14, S.L. has not responded to the request for information the Spanish Agency for Data Protection, nor has it presented allegations to the agreement of initiation of this proceeding, despite the repeated transfer of the request made by this Agency.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

The defendant is imputed the commission of an infraction for violation of the Article 5 of the RGPD, which states that: “Personal data will be processed: “adequate, relevant and limited to what is necessary in relation to the purposes for which

that are processed ("data minimization").

Article 6.1 of the RGPD (Legality of the treatment) establishes the assumptions specific conditions under which the processing of personal data is considered lawful. the interested.

The treatment of images in public places can only be carried out -in your case and prior compliance with the legally enforceable requirements-, by the Forces and Security Forces, unless the exception established in article 4.3 operates of Instruction 1/2006, of November 8, of this Agency, which establishes:

“Cameras and video cameras installed in private spaces may not obtain images of public spaces unless it is essential for the surveillance purpose that is intended, or it is impossible to avoid it by reason of the location of those. In any case, any data processing should be avoided. unnecessary for the intended purpose.

It should be noted that individuals can install video surveillance cameras, but they cannot be oriented towards the public road and/or private space of third parties, affecting their privacy without just cause.

III

Article 22 of the LOPDGDD. Processing for video surveillance purposes, provides that:

"1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of persons and goods, as well as their installations.

2. Images of public roads may only be captured to the extent that it is essential for the purpose mentioned in the previous section.

However, it will be possible to capture public roads to a greater extent

when necessary to ensure the safety of goods or facilities

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strategic or infrastructure linked to transport, without in any case

may involve capturing images of the interior of a private home.

3. The data will be deleted within a maximum period of one month from its capture,

except when they had to be kept to prove the commission of acts that

threaten the integrity of persons, property or facilities. In such a case, the

Images must be made available to the competent authority within a period

maximum of seventy-two hours from the knowledge of the existence of

the recording.

The blocking obligation provided for in the

article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is

understood fulfilled by placing an informative device instead

sufficiently visible identifying, at least, the existence of the treatment, the

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

Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

informative device a connection code or internet address to this

information.

In any case, the person in charge of the treatment must keep available to the

affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded

of its scope of application the treatment by a natural person of images that just capture the inside of your own home.

This exclusion does not cover processing carried out by a security entity private that had been contracted for the surveillance of a home and had access to the images.

6. The processing of personal data from images and sounds

obtained through the use of cameras and video cameras by the Forces and Security Bodies and by the competent bodies for surveillance and control in penitentiary centers and for the control, regulation, vigilance and discipline of the traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment is for the purposes of prevention, investigation, detection or prosecution of criminal offenses or execution of criminal sanctions, including protection and prevention against threats to public safety. Outside

In these cases, said treatment will be governed by its specific legislation and additionally by Regulation (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to the provisions of the Law 5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through information systems cameras or video cameras is subject to the provisions of article 89 of this law organic”.

IV

The facts are specified in the finding by the claimant of the installation of a video surveillance camera installed on Ample street 24-29 (Barcelona) without just cause, being able to obtain images of public roads.

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Video surveillance allows capturing images, but its use affects the identified or identifiable persons, therefore, they constitute personal data staff.

Article 5.1 RGPD provides the following: "Personal data will be:

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

Obtaining images of public space by individuals is prohibited, as it is an exclusive competence of the Security Forces and Bodies.

Therefore, it is not possible to install a camera with the aforementioned characteristics, with probable orientation towards public roads, as it is prohibited by our legal legal.

In case the system is operational, that is, it obtains images, it must be take into account the reading of article 13 RGPD.

"When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

- the identity and contact details of the person in charge and, where appropriate, of their representative;
- the contact details of the data protection officer, if any;
- the purposes of the treatment to which the personal data is destined and the basis legal treatment; (...)"

Therefore, the person in charge must place a poster in a visible area homologated where at least the person in charge of the file is indicated before whom

exercise the rights recognized in the RGPD.

v

Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this

Regulation;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

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i) impose an administrative fine under article 83, in addition to or instead of of the measures mentioned in this section, depending on the circumstances of each particular case;

Article 83.1 of the RGPD provides the following:

"Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 and 6 are in each individual case effective, proportionate and dissuasive".

The denounced party must prove that the chamber in question does not obtain images of public space, providing screen printing with date and time that certifies the above or that it has proceeded to correct the situation described, in

manner that complies with current legislation.

In the event that the camera obtains images, it must proceed to place visible area an approved sign where you can see the person responsible before the to exercise, where appropriate, the rights recognized in the RGPD.

Likewise, it must be remembered that the persistence of a hindering attitude the work of this body can be valued when imposing a sanction pecuniary according to the denounced conduct.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- PROCEED to APERCEIVE CALVADOS 14, S.L., for the infringement of article 5.1.c) of the RGPD, in connection with article 6 of the aforementioned regulatory text, typified in the art. 83.5 section a) of the RGPD ordering that it proceed by virtue of what is established in article 58.2 letter d) RGPD:

-Reorientation of the camera towards a private area of its ownership, contributing in your case screen print of what is observed with the system in question, as well as a photograph (date and time) that proves the required reorientation.

-Placement, where appropriate, in a visible area of the approved poster where Indicate the person responsible for the file.

2.- NOTIFY this resolution to CALVADOS 14, S.L. and, according to art. 77.2 of the RGPD, INFORM the claimant about the result of the claim.

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. 114.1 c) of the LPACAP, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

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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-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.

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