

□ Procedure No.: PS/00270/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (hereinafter, the claimant) dated April 24, 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 to feel intimidated by a camera system

that could be affecting adjacent public and/or private space without cause

justified.

Together with the claim, it provides documentary evidence (Annex I) that proves the

presence of the cameras object of complaint.

SECOND. On 06/01/20 a new Complaint was received from the City Council

*** LOCATION.1 (Granada) by means of which the complaint of the

Local Police, signaling the presence of an exterior camera oriented towards space

public, expressing a situation of "contempt" in the response of the accused,

not clarifying the legality of the installed outdoor camera.

THIRD. On 05/22/20, the claim is TRANSFERRED to the

denounced so that he may allege what he deems appropriate in law.

FOURTH. On 07/02/20 and 08/03/20, a reply was received from the defendant

stating the following:

"In these circumstances the complainant is fraudulently using the

AEPD, to pursue the damage for the damage, when it is known that it has already been filed with my

favour (...)

The security camera system in the establishment is destined for the sole purpose of security, to avoid robberies that it has been suffering (...), as evidenced by the Police Reports that have been attached (...).

These people filed a complaint against me in the Court of Instruction of Granada, which rejected his claim and shelved it as it was unfounded”.

Given the harassing and unjustified behavior of these people and with the purpose of initiating legal action against them, I request the AEPD to be informed of their identity (...). ”.

As accompanying supporting documentation:

- Photographs of informative poster.
- Image captured from the camera.
- Photograph of the business in which the cameras are installed.

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FIFTH. On November 5, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the defendant, with glo to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-Common Administrative Procedure of Public Administrations (hereinafter, LPA-CAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

SIXTH. On 11/24/20 new allegations to the Start Agreement are received stating the following:

“Well, we will examine, below, why the Complaint that originated this

procedure There is no basis to support the sanction proposed in the

Start Agreement (...).

(...) after an extensive documentary contributed and practiced in the period of

evidence, including requiring the Government Subdelegation in Granada on behalf of

of this Agency on the installation in question (...), as can be seen from the Annex

together with the Resolution of this Agency, in which the documentary is related in the

aforementioned file and that we now consider reproduced, requesting the incorporation

from said file PS/00514/2009 to the present (...).

“Now, 11 years later, a procedure is being instituted against me again for

identical facts that in their day were already subjected to analysis and assessment by the

AEPD determined as I have indicated the File (...).

Finally, in order to proceed to the Archive of this procedure, I propose

as proof that the Procedure with reference number is incorporated into it

PS/00514/2009 filed against me for the same facts and resolved at the time with

the Archive of the same and that works in the Archives of the Agency (...)

By virtue of this, I REQUEST: Consider submitting this document within the term

conferred to make allegations and admit it, with the documentation that

accompanies (...).

SEVENTH: Attached as an annex is a list of documents in the

procedure, recalling full access to the administrative file for the purposes

appropriate legal.

EIGHTH: On 11/25/20, a resolution proposal is issued, accrediting

the commission of the infringement of art. 5.1 c) GDPR; proposing a sanction encrypted in

the amount of €2,000 (Two Thousand Euros) given that the exterior cameras record

widely public space, affecting the right of third parties in a

disproportionate

NINTH: The database of this Agency consulted on 12/28/20 has not been received any allegation by the accused, nor does it prove to have regularized the system in question.

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

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PROVEN FACTS

First. The facts bring cause of the presence of a system of video cameras surveillance, which is considered not to comply with current legislation, causing various you are problems in the locality.

Second. The resident of the locality, Don B.B.B.

Third. The establishment has an informative poster, although in it the regulations reviewed is LO 15/99, December 13, currently repealed, unable to identify identify the person responsible for the treatment.

Fourth. It does not prove that it has an informative form(s) available to customers access the establishment where appropriate.

Fifth. Excessive capture of public space without just cause is verified.

- Camera No. 1 located on the façade of the establishment allows images of public space, as evidenced by the photograph of the car parked in the outside of it.

-Camera nº 2 allows to obtain images of the entire sidewalk, reaching the reach-
ce to the sidewalk and properties located in front of it.

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 re-
solve this procedure.

II

In the present case, we proceed to examine the claim(s) dated 04/24/20 and
06/01/20 through which the installation of a
camera system that could be affecting public space without just cause.
gives.

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 the systems
more installed comply with current legislation, proving that it complies with
all the requirements demanded by the regulations in force.

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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 intimidating neighboring neighbors with this type of device, as well as controls in transit areas of the same without just cause.

With this type of device it is also not possible to obtain image(s) of space in public service, as this is the exclusive competence of the Security Forces and Corps of the State.

It should be remembered that even in the case of a "simulated" camera, the

It should preferably be oriented towards private space, since it is considered that this type of device may affect the privacy of third parties, which they are intimidated by it in the belief of being permanently recorded.

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 material evidence available in this process, sanctioning procedure, it is considered that the defendant has a system of cameras that widely records public space, without just cause.

As for the main argument put forward by the defendant, which is based in the File Resolution of this body with reference number

PS/00514/2009 therein on page 18 the following is stated:

"However, in the aforementioned Report it has not been verified what is the percentage capture of the aforementioned cameras, so it cannot be proven whether this is or not, the strictly proportional and appropriate to the purpose that would justify the installation of the cities' all cameras."

In the evidence provided by the defendant (Documentary Annex I), it has been possible to

Whether to analyze based on the images provided what is actually captured with the themselves.

Camera No. 1 located on the façade of the establishment allows images to be obtained genes of public space, as evidenced by the photograph of the car parked in the former inside of it.

Camera No. 2 allows to obtain images of the entire sidewalk, reaching the to the sidewalk and properties located in front of it.

Therefore, the request for evidence must be dismissed, although the Resolution of this body wielded by the defendant has been the subject of a new reading in his whole.

The Dictionary of the Royal Academy in web version defines public roads as:

"Street, square, road or other place where the public transits or circulates"

According to this Agency, capturing and recording images of identifiable persons in a place with public and free access, which is not closed at any time and there are no restrictions for its use or transit, it will be considered as "space

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public" regardless of its ownership and therefore, the installation of video surveillance lance in these spaces will be the exclusive responsibility of the Security Forces and Corps. state security.

Exterior cameras do not need to capture the full width of the sidewalk public, fulfilling its function with the necessary capture of the façade of the establishment. management that it runs, thus avoiding obtaining data from third parties without

just cause.

These recordings "incorporate personal data" of the people who enter within your field of vision and, therefore, the personal data collected is protected submitted to the consent of their owners.

In short, a wide angle of vision of the public road and of the people is achieved.

that circulate through it, therefore carrying out an excessive treatment and not pro-

of the images, in relation to the scope and the purposes that could justify

to certify their collection, since the security that is intended by such video cameras

Maras could also be obtained by less intrusive means for the privacy of

affected people, such as through the installation of privacy screens.

emptiness that prevented the capturing of images on public roads beyond what was necessary.

cesarean and proportional (vgr. SAN of 2/10/2011).

The accredited known facts are constitutive of an infraction, imputed

ble to the claimed, for violation of the content of art. 5.1 c) GDPR, previously

transcribed.

IV

The art. 83.5 RGPD provides the following: "Infringements of the following provisions

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

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

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

above, 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

nature, scope or purpose of the treatment operation in question, as well as the number of interested parties affected and the level of damages suffered; (art. 83.2 a) RGPD).

- the intent or negligence in the infringement; (art. 83.2 b) RGPD).

In the present case, the denounced cameras (Camera nº 1 and nº 2) are oriented blatantly into public space, so that the defendant controls all the width of the public sidewalk disproportionately, which is why it is imposed a sanction encrypted in the amount of €2,000 (Two Thousand Euros) sanction located in the lower cove for this type of behavior.

All this without prejudice to regularizing the denounced system, directing it towards the area of the façade of your establishment, avoiding capturing the width of the public sidewalk, providing new images that prove what has been done in your case; re-agreeing that the new regulation on the matter is the RGPD (EU Regulation 2016/679 regarding the protection of natural persons with regard to the processing of data www.aepd.es

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personal data and the free circulation of these data) and that it must have forms

River available to customers inside the establishment it runs.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria of the 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 €2,000 (Two Thousand Eu-

ros).

SECOND: NOTIFY this resolution to B.B.B. and REPORT the result

of the proceedings to the complaining parties A.A.A.

and TOWN HALL

***LOCATION.1 (GRANADA).

THIRD: 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, of the Administrative Procedure Co-

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

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 in the name of the Spanish Agency

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

Otherwise, it will be collected during 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

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.

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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and section 5 of the additional provision Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, within a period of two months from the day following the notification of this act, as provided for 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 interested party

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do states its intention to file a contentious-administrative appeal. Of being

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to 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 that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive within 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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