

Procedure No.: PS/00334/2018

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before A.A.A., by virtue of a claim filed by D. G. DE LA POLICIA - COMISARIA LEÓN JUDICIAL POLICE - NARCOTIC USE (hereinafter, the claimant) and in based on the following:

BACKGROUND

FIRST: The claim filed by the claimant has an entry dated 07/19/2018 at the Spanish Data Protection Agency. The claim is directed against the citizen AAA, (hereinafter, the claimed).

The reasons on which the claim is based are "installation of hidden cameras" facing public roads without just cause, controlling said space for spurious reasons.

Along with the claim, provide documentary evidence (Photographs Annex I) that prove the presence of the devices.

SECOND: On 11/19/18, the claim was TRANSFERRED to the party denounced, to proceed to argue about the characteristics of the system denounced, appearing as "Notified" in the computer system of this organism.

THIRD: On November 23, 2018, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of article 5 of the RGPD in connection with article 6 of the mentioned normative text, infringement typified in article 83.2 of the RGPD and classified as very serious, since the installed system is affecting the rights of third parties and with a diversion of the purpose of the same to be oriented towards space

public.

FOURTH: The database of this body was consulted (03/15/19) and there is no any allegation made by the accused party for the appropriate legal purposes.

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: On 07/19/18, this body received a COMPLAINT from D.G.P.

(Judicial Narcotics Brigade-Leon Provincial Police Station) the following facts:

“installation of video-surveillance cameras to the outside with the purpose of

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control the entrances and exits of the same disproportionately” (folio nº 1).

Documentary evidence is attached (Annex I) with various photographs with the

Current location of video surveillance cameras.

SECOND: It is accredited that the person responsible for installing the system is

A.A.A., which is identified by the Police, with card number ***DNI.1.

THIRD: The installation of a video camera system has been accredited.

camouflaged surveillance, oriented towards public space, controlling the entry/exit of the property.

FOURTH: There is no evidence that the system has any informative poster where the person responsible for it is captured.

FIFTH: The cause/reason for the installation is not stated, although the evidence provided point to a control of the entrance of the building, as a consequence of the presumed

illicit activities that take place there.

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 as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

II

In the present case, we proceed to examine the claim of entry date 07/19/18 through which he was transferred by the D.G.P (Judicial Brigade of Narcotics-León Provincial Police Station) the following facts:

“installation of video-surveillance cameras to the outside with the purpose of control the entrances and exits of the same disproportionately” (folio nº 1).

Documentary evidence is attached (Annex I) with various photographs with the Current location of video surveillance cameras.

It should be remembered that individuals can install security cameras video surveillance, but that they must be responsible that they conform to the current regulations, avoiding the capture of public and/or private space from third parties without justified cause.

The facts described suppose an affectation of the content of article 5 RGPD, which provides: “Personal data will be:

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c) 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 cameras installed by individuals cannot obtain images of public space, in any case the cameras must be oriented inside your private home.

The presence of the cameras supposes an affectation to the right to privacy of third parties, as well as a disproportionate measure in the intended purpose with the same.

Individuals cannot install a video-surveillance system with guidance towards public roads, in order to control such space.

This type of device can "process personal data", not being one of the exceptions in the RGPD when it comes to having the consent of those affected (article 6 RGPD).

III

Article 83 section 5 of the RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with fines administrative fees of EUR 20,000,000 maximum or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual turnover of the previous financial year, opting for the highest amount:

b) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9; (...)"

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD, in its art. 58.2 b) establishes the possibility of sanctioning with a warning, in relation to what stated in Recital 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 sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

IV

In accordance with the foregoing, the commission of an infraction is accredited administrative, when verifying the Security Forces and Bodies, the existence of a operational video-surveillance camera system, clearly oriented towards public space without just cause.

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Article 77 section 5 Law 39/2015 (October 1)-LPAC-provides the following:

“The documents formalized by the officials who are recognized as condition of authority and in which, observing the legal requirements corresponding the facts verified by those are gathered will prove of unless proven otherwise”.

It is recorded in the computer system of this body that it has been notified on time and forms the Start Agreement of PS/00334/2018, as certified by the Official Service of Mail and Telegraphs.

Therefore, the respondent party is considered to have been widely informed of their rights and obligations, voluntarily renouncing to carry out any allegation.

Article 71 of the new Organic Law on Data Protection and Guarantees of Digital Rights (LO 3/2018, December 5) provides the following:

“The acts and behaviors referred to in the regulations constitute infractions.

sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law.

The denounced party must proceed immediately to withdraw of the camera(s) from your current location, so that you cannot capture public space.

Documentary evidence must be sent of the action carried out (photograph with date and time) that accredits such end, being warned that showing an attitude passive to the requirements of this organism, can lead to the opening of Penalty procedure for infraction of the content of article 72.1 letter m) LOPDGDD (LO 3/2018, December 5).

A "new" complaint, confirming the presence of cameras abroad of the property, will lead to the initiation of a new sanctioning procedure, in where the fact that it has already been warned by this body will be taken into account, this aspect that can affect a hypothetical graduation of the sanction economy to impose.

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: PROCEED to WARN Don A.A.A., for the continued infraction of the content of article 5 in connection with article 6 of the RGPD, in the terms of the

article 58.2 RGPD letters b) and d), in such a way that you must within ONE MONTH to counting from the day following the notification of this administrative act, prove before this body that has proceeded to:

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☐ Remove the exterior camera(s), providing a photograph with the date and time that certify such extreme before this organism.

SECOND: NOTIFY this resolution to the accused party A.A.A., and, according to art. 77.2 of the RGPD, INFORM the claimant-- D. G. OF THE POLICE - JUDICIAL POLICE STATION LEÓN – NARCOTIC AGENTS-- on 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

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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