

□ Procedure No.: PS/00038/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: Don A.A.A. (\*hereinafter, the claimant) dated November 22,  
2019 filed a claim with the Spanish Data Protection Agency. The  
claim is directed against the GENERAL SECRETARIAT OF INSTITUTIONS  
PRISONS with NIF S2813060G (hereinafter, the claimed). The reasons in  
on which the claim is based are as follows:

“On August 6, 2019, the General Secretary of Institutions  
Penitentiaries convenes "THE DECENTRALIZED COURSE IN SKILLS  
SOCIAL, PERSONAL INTERACTION AND PRACTICAL PROBLEM SOLVING  
CONFLICTS" course within the Call for training actions included in the plan  
of training for employment of the year 2019 in order to be taught in some centers  
prison officers to prison officers.

The facts in question occur on the occasion of the development of the aforementioned Course  
last October 30 at the Penitentiary Center of \*\*\*LOCALIDAD.1 when  
the Deputy Director of Security in the course of it projects before the attendees  
a series of VIDEOS where both OFFICIALS AND  
OFFICIALS as well as INTERNALS, these officials being totally  
recognizable and faces without pixelation or with some kind of blurred face in  
situations of actions within their work environment, reductions and aggressions of  
interns to civil servants and civil servants.

The Deputy Director of Security has compiled recordings from the cameras of the

penitentiary center corresponding to the years 2016,2017,2018 and 2019 of actions of officials in the exercise of their regular work and has used this material without permission or authorization of the officials that appear in the aforementioned videos or inmates, in addition to using audiovisual material found within the scope of the security of the penitentiary center as material for presentation of a training course.

In fact, some of those attending the conference were able to recognize the officials who appeared in them as well as their intervention in the performances”.

“In conclusion, understanding that, on the part of the Deputy Director of Security of the Penitentiary Center of Jaén as well as by the Director of the Center that has allowed the dissemination of the video during the training sessions, a illegitimate interference with the right to one's own Image, having spread without the consent of prison officials personal data, images, professional license numbers, going against the provisions of article 6 of the L.O.P.D serves this writing to carry out the corresponding initiation of [www.aepd.es](http://www.aepd.es)

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2/7

sanctioning procedure initiating proceedings in order to determine whether Circumstances exist that justify such initiation.

SECOND: On 01/15/20, the claim was TRANSFERRED to the entity reported-- GENERAL SECRETARIAT OF PENITENTIARY INSTITUTIONS- to the effects of expressing in law what it deems appropriate about the facts object

of complaint.

THIRD. On 02/10/20, this agency received a written statement of allegations from the denounced party, stating the following

“The Center does not collect video recorders. They are deleted automatically by the system 15 days after its recording, unless one of the they were related to matters that are judicialized, in which case kept at the disposal of the corresponding judicial authority. It is not understood whistleblower's claim that camera recordings have been collected corresponding to the years 2016, 2017, 2018 and 2019.

The specific recording or recordings alluded to in the complaint are unknown. as well as the identity of the people to whom an "interference illegitimate the right to one's own image".

That such Complaint could be related to the opening of Prior Information nº \*\*\*INFORMATION.1 carried out by the Penitentiary Inspection to the official of this Center D.B.B.B. (brother of the person who filed the aforementioned complaint). Another fact that supports what was stated in the previous point is the fact that incriminate the Director of the Center who has NOT participated in any of the Training Courses training referred to by the Complainant”

FOURTH: On March 23, 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 13 of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: On 06/12/20, this Agency received a written statement of allegations from the entity denounced succinctly alleging the following:

-The video used in the training course on the CP of

\*\*\* LOCATION.1 and specifically referred to in the claim that gives rise to the sanctioning procedure in question. He has used the technique of pixelated and it is difficult to recognize the recorded officials and inmates.

-Notwithstanding the foregoing, and despite the effort made because recognized the interveners, there is the understandable possibility that the same can be identified. Especially if images recorded on the device itself are used. center where the action took place.

Therefore, in relation to the specific regulations and considering the different interests at stake in the sense indicated in article 6.4 RGPD, it is considered that the use of the video surveillance images of the centers for training purposes, must generally have the express consent of those involved in the images to watch.

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3/7

-At this time, the General Secretariat of Penitentiary Institutions is in the process of preparing an instruction that regulates video surveillance inside the establishments. As a specific section of said instruction, It is planned to regulate the use of recordings for training media under the regime of the consent of the interested party. The health crisis experienced has slowed down this process which has already been resumed and is expected to be completed during this year.

SIXTH: Attached as an annex is a list of documents in the process.

SEVENTH. On 09/11/20, the "Resolution Proposal" was issued by the accredited infringement of the content of art. 6 RGPD, having processed data (images) of employees of the Penitentiary Center, if they have adopted the necessary measures to obtain your informed consent in this regard, not being the same pixelated

EIGHTH. On 09/25/20, a WRITTEN is received from the denounced entity, if although no allegation is attached, after checking the registration system of this Agency.

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

#### PROVEN FACTS

First. Complaint is received in this AEPD on 11/22/19 by means of which transfers as the main fact "recordings of officials in the exercise of their professional activities" without their informed consent.

Second. It consists of the main person responsible for the recordings made- General Secretariat of Penitentiary Institutions—which is responsible for carrying out recordings for the purpose of training courses for public employees.

Third. The obtaining of images of the employees of the center is accredited, without that information in this regard has been provided to them about the purpose of the themselves.

Fourth. The processing of personal data (images) is accredited as accredits the video provided to the instruction of this administrative procedure.

Fifth. The entity denounced is proceeding to prepare an Instruction that regulates the issue of "video-surveillance" inside establishments penitentiary

#### FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority, 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 solve this procedure.

II

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4/7

In the present case, the claim dated 11/22/19 is examined by means of which the claimant considers that there has been a data processing of personal character outside the permitted cases, when the images of various civil servants (as) by the Penitentiary Center of Jaén, within the framework of a training course for public employees.

The images (personal data) of the officials have been obtained from recordings of the video-surveillance cameras, being used without their informed consent within a training course given by the Penitentiary Institution.

Article 4 section 11 of the new RGPD- REGULATION (EU) 2016/679

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of April 27, 2016-- provides

Next:

«consent of the interested party»: any manifestation of free will, specifically informed and unequivocal by which the interested party accepts, either through a declaration or a clear affirmative action, the treatment of personal data that con-

hover (...)"

Article 6 GDPR provides the following:

"The treatment will only be lawful if at least one of the following conditions is fulfilled:

ditions:

a) the interested party gave their consent for the processing of their personal data

final for one or several specific purposes;

b) the treatment is necessary for the execution of a contract in which the

resado is part or for the application at its request of pre-contractual measures;

c) the treatment is necessary for the fulfillment of an applicable legal obligation.

cable to the data controller;

d) the processing is necessary to protect the vital interests of the data subject or

of another natural person;

e) the treatment is necessary for the fulfillment of a mission carried out in

public interest or in the exercise of public powers vested in the person responsible for the

treatment;

f) the treatment is necessary for the satisfaction of legitimate interests per-

guided by the person in charge of the treatment or by a third party, provided that on said

interests do not override the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data, in particular when the

teresa be a child.

The provisions of letter f) of the first paragraph shall not apply to the treatment

conduct carried out by public authorities in the exercise of their functions (...)"

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The use of the image of a person without their authorization may violate the right close to your privacy. The right to one's own image includes, in short, the right to control the diffusion of the most external aspect, that of the human figure.

The delivery of training courses to public employees may contain in principle, images of situations of professional life, in order to improve aspects related to their integrity or security, although it is recommended immensable the pixelation of these or have the informed consent of the use of these for certain purposes.

As a result of the new GDPR regulations, public entities must evaluate the different ways by which they obtain consent, in order to gain guarantee that it is free, informed, specific, and above all unequivocal.

It is understood that the interested party gives this consent when he knows, without without a doubt, that he is granting his approval. That is why it does not admit forms of implied or default consent (based on inaction).

### III

In accordance with the evidence available in this proceeding, sanctioning procedure, it is considered that the claimed "treatment of personal data" of a number indeterminate number of public officials, without the informed consent mado in the treatment of images (personal data associated with them).

The known facts constitute an infraction, attributable to the claimant. mado, for violation of the content of article 6 RGD, previously mentioned.

Article 83.5 a) RGD provides the following: "Infringements of the provisions

The following actions will be sanctioned, in accordance with section 2, with administrative fines. transactions of a maximum of EUR 20,000,000 or, in the case of a company, a amount equivalent to a maximum of 4% of the total global annual turnover of the



previous financial year, 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; (...)"

#### IV

It should be noted that the reported entity is a Penitentiary Center

(\*\*\* LOCATION.1), which is why its nature as an Administration is taken into account.

Public tion, being the conduct carried out in the exercise of its administrative functions and included in a Training Plan aimed at public employees.

The images were "treated", an aspect on which they initially agree

both parties, without having provided a document informing the group in this regard of the Penitentiary Center staff.

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6/7

The RGPD adds a formal requirement, unlike the primitive LOPD (today repealed), to obtain consent and thus ensure that it is unequivocal: consent must be obtained through a statement or through a clear affirmative action.

Article 58 section 2 of the RGPD provides the following: "Each authority of control will have all the following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with a warning. when the processing operations have violated the provisions of the sente Regulation; (...)"

Article 77 section 2 of the LOPDGDD (LO 3/2018, December 5) provides the

Next:

“When the persons in charge or persons in charge listed in section 1 had any of the infractions referred to in articles 72 to 74 of this law organic, the data protection authority that is competent will issue resolutions sanctioning them with a warning. The resolution will also establish as the measures that should be adopted to stop the behavior or correct the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the person of which it depends hierarchically, in his case, and to those affected who had the condition of interested party, if any”.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions analogous of the autonomous communities the actions carried out and the resolutions orders issued under this article (...)”.

So that, in the present case, the condition of Administrative Public disclosure of the accused, as well as that it has immediately adopted corrective measures of their conduct, reasons that justify the imposition of a sanction administrative warning.

Finally, it is important to remember that consent must be verifiable through posteriori and those who collect personal data must be able to determine show that the consent of the affected party has been obtained.

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 the entity GENERAL SECRETARIAT OF INSTITUTIONS PENITENTIARY, with NIF S2816001H, for a violation of Article 6 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of WARNING.

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7/7

SECOND: NOTIFY this resolution to the reported entity ---SECRET-

GENERAL RÍA OF PENITENTIARY INSTITUTIONS---.

THIRD

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman,

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

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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