

Procedure No.: PS/00335/2018

RESOLUTION OF PUNISHMENT PROCEDURE

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

A.A.A., by virtue of a claim filed by D. G. DE LA POLICIA - COMISARIA

JUDICIAL POLICE - NARCOTICS (hereinafter, the claimant) and based on

the following:

BACKGROUND

FIRST: The claim filed by the Security Forces and Bodies of the

State has entry dated 07/19/2018 in the Spanish Agency for the Protection of

Data. The claim is directed against A.A.A., with NIF ***DNI.1 (hereinafter, the

reclaimed). The grounds on which the claim is based are as follows:

“...the investigators observed how the property had security cameras.

security in windows, hidden in object and without any type of visible poster that

will communicate such end” (folio nº 1).

“The facility detected had no other purpose, according to police criteria, than to carry out

carry out the illicit activity of drug trafficking with greater security, since with the

cameras could perfectly detect the police presence in the area (...)”—folio nº

1--.

SECOND: On 01/09/2019, the Start Agreement was TRANSFERRED

of the sanctioning procedure with reference number PS/00335/2018 to the part

denounced, to certify in law that it was in accordance with the legality

in force, being notified on 12/11/2018, by the Official Postal Service.

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.

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, a claim from the

State Security Forces and Bodies through which the

installation of various video-surveillance cameras blatantly oriented towards public space.

SECOND: It is accredited as the main person in charge of the property Mr. A.A.A.,

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with DNI ***DNI.1.

THIRD: The presence of several operating devices is accredited

focusing on the public road, with the purpose of controlling it.

☐ Camera 1: placed in the front room on the 1st floor on the left.

☐ Camera 2: hidden inside a doll and focusing outwards.

FOURTH: It is not accredited that you have the mandatory information poster

informing that it is a video-monitored area, informing the person in charge of the file.

FIFTH: The Start Agreement of this procedure has been notified according to

acknowledgment of receipt issued by the Official Postal Service, without any manifestation any has occurred by the accused party.

SIXTH: The evidence provided points to the control of public space for reasons of the alleged "illicit activity" that takes place in the property, which allows greater capacity to react to actions by the Security Forces and Corps State Security.

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

Article 5 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");

It should be remembered that individuals can install video cameras surveillance, but that they must take responsibility that they comply with the regulations in force, avoiding the capture of public and/or private space by third parties without cause justified.

The system must have an informative device in a visible area indicating that it is a video-monitored area, indicating the person in charge of the himself, before whom he can address himself effectively.

In no case will the use of surveillance practices beyond the environment be allowed.

object of the installation and in particular, not being able to affect public spaces

surrounding areas, adjoining buildings or dwellings and vehicles other than those accessing to the guarded space.

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Individuals cannot install a video-surveillance system with orientation towards the public thoroughfare, 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).

Article 4 section 3 of Instruction 1/2006 (AEPD) provides the following:

“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 purpose pursued” (*underlining belongs to this body).

Therefore, capturing images of public spaces by security cameras private surveillance, must be limited to what is strictly necessary, applying in any case the principle of proportionality.

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 the present case, the installation of a video-surveillance system is accredited with clear affectation towards public space, to control access to the property, being developed in the same according to police statement "illegal activity of drug traffic".

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The person responsible has been identified as Mr. A.A.A., as an inhabitant of the Flat

1st Left, located at ***ADDRESS.1.

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 in time and forms the Start Agreement of PS/00335/2018, as certified by the Service Post and Telegraph Officer.

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.

Furthermore, a passive attitude towards the Resolutions of this body, could lead to the initiation of a sanctioning procedure, which could carry a pecuniary fine, for the infraction classified as very serious of article 72. section 1 letter m), which provides:

“Failure to comply with the resolutions issued by the protection authority data controller in exercise of the powers conferred by article 58.2 of the Regulation (EU) 2016/679”.

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In accordance with the foregoing, the administrative infraction is accredited, by the

installation of video-surveillance cameras, capturing public roads in a way disproportionate, without stating any allegation about the cause/reason for such extreme.

Based on which it proceeds to warn the accused party, who must immediate way to dismantle the cameras from their current place, accrediting such end to this organization by means of a photograph with date and time that proves such extreme.

In case of persisting in an attitude of non-collaboration with this body, such extreme will be taken into account when grading a hypothetical sanction administrative of a pecuniary nature, considering that it has been widely

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informed in this regard and fully assuming the legal consequences of their acts.

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 organism that has proceeded to.

☐ 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 Mr. A.A.A., and, in accordance with art. 77.2 of the RGPD, INFORM the claimant-- D. G. OF THE POLICE - POLICE STATION JUDICIAL -NARCOTICS- 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.

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Director of the Spanish Data Protection Agency

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