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File identification

Archive resolution of the previous information no. IP 313/2018, referring to the Secretary of Penal Measures, Reintegration and Victim Care of the Department of Justice of the Generalitat of Catalonia (Penitential Center (...)).

Background

1. On 05/11/2018, the Catalan Data Protection Authority received a letter from a trade union for which it filed a complaint against the Department of Justice's Secretary of Penal Measures, Reintegration and Victim Support (hereinafter, SMPRAV), due to an alleged breach of the regulations on the protection of personal data.

Specifically, the complainant union stated that in the Penitentiary Center (...) (hereafter, CP (...)) a camera had been installed aimed at the office of the officials of the special department (space to which the internal persons, according to the complainant union) to monitor their work activity, which would have been in operation since 19/10/2018. He added that it was not recorded that this camera was authorized by the Secretary General of the Department of Justice. In turn, the complainant union also indicated that no information poster had been placed to the employees about the existence of said camera.

2. The Authority opened a preliminary information phase (no. IP 313/2018), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. In this information phase, on 11/13/2018, the complainant union was requested to specify the location of the camera subject to the complaint.

4. On 21/11/2018, the complainant union responded to said request for information through a letter in which it stated, among others, the following:

- That the "The camera DERT is located in the office of the officials of the special department (space to which the internal persons, according to the complainant union) to monitor their work activity, which would have been in operation since 19/10/2018. He added that it was not recorded that this camera was authorized by the Secretary General of the Department of Justice. In turn, the complainant union also indicated that no information poster had been placed to the employees about the existence of said camera.

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- That the and "the camera is fixed to the ceiling of this space, in the office of officials and

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- What "Control video surveillance" of this space, where the opposite side of the distributor could they perform focus on them in minimal sense access nonsense."

- What two wings of cells of the tenger department and begins the In the current position alone movement of workers."

5. On 05/29/2019 and still within the framework of this preliminary information phase, the Authority carried out an inspection at the CP (...) to verify certain aspects related to the camera installed in the Special Closed Regime Department (DERT). In that act of inspection in person the representatives of the Department of Justice stated the following:

- That the camera located at the DERT was installed in October 2018.
- That this camera did not go into operation until it was authorized by the secretary general of the Department of Justice. This authorization was requested on 03/12/2018 and issued on 11/02/2019.

- That for technical reasons, at the beginning of 2019, the location of the controversial camera was changed, since there was a blind spot.
- That the images captured by this camera allow the identification of natural persons. This camera does not capture voice.
- That the purpose pursued with this camera is to have elements to carry out access control, the prevention of incidents and the physical safety of people.
- That internal people access the DERT when there is a security incident or as a result of a sanction. There, the inmates serve their sentence, separated from the rest.

- That the work activity of employees is not monitored through the indicated camera.

- That there is no evidence that the images captured by this camera have been used in any disciplinary proceedings against any employee of the penitentiary center.
- That the field of view of this camera does not allow monitoring the movements or activity of DERT personnel. The camera is not located in any office, but in a common area.
- That the existence of the cameras is reported through informative posters.

ÿ That through the website of the Department of Justice, the rest of the extremes regarding the processing of personal data are reported.

Likewise, the Authority's inspection staff verified, among others, the following:

- That there was a camera installed in the corridor of the DERT.
- That the images captured by said camera could be viewed from the control cabin.
The inspection staff photographed the field of vision of this camera in real time; as well as the dependencies of the DERT.

Carrer Rosselló, 214, esc. A, 1st 1st
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- That at the access through the interior entrance there was an informative poster about the existence of the cameras, which was photographed. After passing said access, it was found that there was no other information poster. Nor access to the DERT or its interior.

For their part, the representatives of the Department of Justice provided the inspection staff with a copy of the authorization to install the camera subject to the complaint, issued by the secretary general of the Department of Justice.

Finally, the inspection staff required the inspected entity to report to the Authority on whether the images captured by the camera subject to inspection had been used in any disciplinary proceedings against any employee of the penitentiary center.

6. On 05/30/2019, also during this preliminary information phase, the Department of Justice was required to report on whether in the rest of the eventual access to the restricted spaces where the inmates remain (such as in the access to the restricted area by people who access the penitentiary center through a police vehicle), the Department of Justice reported the existence of the cameras through informative posters.

7. On 07/06/2019, the Department of Justice complied with the previous requirement and the one formulated in the on-site inspection act, by means of a letter stating that, on 05/30/2019, no disciplinary proceedings had been entered in which the images recorded by the camera in question had been used.

On the other hand, the Department of Justice certified by means of photographs the placement of five informative posters of the existence of the cameras in various locations. Among these, at the main entrance of the center (first access) and at the entrance to the center through the second access (police or prison service vehicles).

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.

2. Based on the account of facts that has been presented in the background section, it is necessary to analyze the reported facts.

2.1. About the authorization.

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The complainant union explained that the camera installed in the DERT would have been put into operation on 19/10/2018 without it being authorized by the secretary general of the Department of Justice.

Certainly, point 3 of the protocol on video surveillance systems in the criminal execution centers of the Department of Justice (annex 2 of Instruction 1/2009, of March 9, on video surveillance protocols of the Department of Justice) provides that the installation of video surveillance systems requires the prior authorization of the Secretary General of the Department of Justice.

Well, the representatives of the Department of Justice present at the face-to-face inspection carried out on 05/29/2019 at the CP (...) documented that, on 02/11/2019, the general secretary of the Department of Justice authorized the installation, among others, of a camera in the lobby of the DERT.

At this point, it should be noted that the camera subject to the complaint was installed during the month of October 2018 (on 10/19/2018 according to the complainant union), that is to say, prior to obtaining the mandatory authorization. But there is no record that the Department had started capturing images before 11/02/2019, the date on which the camera was authorized. In this respect, the representatives of the Department of Justice in the inspection act mentioned above, stated that the capture of images through said camera did not begin before obtaining the authorization.

As things stand, it must be concluded that within the framework of the prior information actions carried out, it has not been possible to prove that the Department of Justice had started the processing of images through said camera before obtaining of the mandatory authorization (11/02/2019). The principle of presumption of innocence is considered applicable here given that the existence of evidence of infringement could not be proven and, therefore, administrative responsibility cannot be demanded. This principle, which is included in article 53.2b) of the LPAC, recognizes the right the presumption of non-existence of administrative responsibility while contrary". no is "To prove the

2.2. About labor control.

The complainant union also stated that the camera installed in the DERT was aimed at the office of the officials of the special department, and would have the purpose of monitoring the work activity of the officials. With the complaint, the union did not provide any evidence to prove the use of the images for this purpose of labor control, but referred to a suspicion that such use could be given to the images captured by the camera installed at the DERT, suspicion derived from the field of vision of the camera, since the union stated that it focused on the officials' office.

Carrer Rosselló, 214, esc. A, 1st 1st
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In this respect, article 7.3.b) of Instruction 1/2009, of February 10, on the processing of personal data through cameras for video surveillance purposes, issued by this Authority, provides that it may be inappropriate to the principle of proportionality:

"b) The use of video surveillance systems exclusively to the labor field with the purpose in monitor the performance of workers."

For its part, Instruction 1/2009, issued by the Department of Justice, regarding video surveillance systems in penal execution centers provides that video surveillance installations for the purposes of: Labor control (...) (2nd point of Annex 2 of Instruction 1/2009, of March 9).
"They will not be used under any circumstances"

Likewise, in Circular 2/2010, of June 1, adapting the video surveillance protocol of the Department of Justice to penal enforcement centers and facilities, approved by the Instruction, of March 9, it affects the prohibition to use the images captured in the penal execution centers and facilities for labor control purposes (point 3 of Circular 2/2010).

Therefore, the treatment of images captured by video surveillance systems, for the sole purpose of labor control, may be contrary to the principle of proportionality or data minimization (art. 5.1.c of Regulation (EU) 2016/679 of the Parliament European and Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data - hereinafter, RGPD -), which establishes that personal data

"adequate, pertinent limited to the purposes and they will be necessary".

Regarding the use of the images captured by the controversial camera, the representatives of the Department of Justice stated in the act of on-site inspection that "the purpose pursued with this camera is to have elements to carry out access control, incident prevention and physical security."

In turn, the representatives of the Department of Justice expressly denied that the work activity of the employees of the penitentiary center was monitored through the controversial camera. And, at the request of this Authority, he has confirmed by means of a letter of 07/06/2019 that the images captured by said camera have not been used in any disciplinary proceedings.

The first thing to say about it is that the initial location of the camera subject to the complaint has been modified. As indicated by the representatives of the Department of Justice in the act of on-site inspection, at the beginning of 2019 the location of the controversial camera was changed, since "for technical reasons there was one blind spot."

So things are, in the framework of the previous actions, it has not been possible to verify which was the specific field of focus that the camera object of complaint had in its initial location.

Carrer Rosselló, 214, esc. A, 1st 1st
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Having said that, the complainant union carried out a series of considerations about other areas of the penitentiary center that it believes would be more necessary to monitor through video surveillance, unlike the DERT lobby.

In this respect, it is sufficient to warn that it is not up to this Authority to pronounce on what the specific locations must be for the cameras that make up a video surveillance system in order to more effectively or efficiently achieve the intended purpose

Indeed, the power to decide where a camera is installed is the responsibility of the data controller. Another thing is that the location or the field of focus of the cameras may contravene the principles provided for in Article 5 of the RGPD, such as the principle of data minimization, and that is why it is up to the Authority exercise its powers to ensure that the capture of the images does not violate this principle in particular, nor the rest of the provisions of the personal data protection legislation.

In short, in the face of the manifestation of one side of the denouncing union regarding the use of the camera for labor control purposes, which is not accompanied by any evidentiary element, not even at an indicative level; and on the other hand, the refusal of the Department of Justice on its use for that purpose, a manifestation that could not be distorted by the inspection actions carried out by this Authority, it must be concluded that there are no indications that allow to impute a use of the images for labor control purposes, so that the principle of presumption of innocence is also applicable at this point.

2.3.- On the right to information.

The complaining union also pointed out that the Department of Justice had not put up any informational posters about the existence of the cameras. In the inspection actions, it was verified that, indeed, as the complainant union pointed out, neither at the entrance to the DERT, nor inside it, was there any sign informing of the existence of the cameras.

However, in that act of in-person inspection, the inspector staff verified that there was a sign informing of the existence of the cameras in the access to the interior area of the CP.

At this point it should be borne in mind that Instruction 1/2009, of the APDCAT, does not require the placement of a poster for each of the cameras that make up the video surveillance system, nor that the specific location of the cameras.

Having established the above, as provided in sections 1 and 3 of article 12 of Instruction 1/2009, the data controller must inform "in a clear and permanent way about the existence of the cameras by placing the information in posters that must be placed in the field of vision of the people affected (art. 12.1) and that the clearly visible locations before entering each case, from the structure of the recording of the nature and , whose location "it will depend, in areas

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And adds the art. 12.3 of Instruction 1/2009 that "For the video surveillance cameras at each in buildings or facilities, an informative poster must be placed in the area of the access to the area."

Therefore, given the nature and structure of the video surveillance area (penitentiary center), it is considered that the people affected by the processing of images carried out through the camera installed at the DERT, are informed of its existence through of the signs located at the entrances, as is the case with the sign that the Department had installed at the entrance to the interior area and that the Authority's inspector staff checked.

Likewise, the Department has also certified by means of a letter dated 07/06/2019 that at the main entrance and also at the access to the center by means of police or prison service vehicles, an information poster had been placed the existence of the cameras.

In short, at the discretion of this Authority, the Department of Justice does not infringe the principle of transparency contained in article 5.1.a) RGPD and developed in articles 13 and 14 RGPD with regard to the specific information that must provide to the affected person.

3. In accordance with everything that has been set out in the 2nd legal basis, and since during the actions carried out in the framework of the previous information it has not been proven that there are rational indications that allow any fact to be imputed which may constitute one of the offenses provided for in the applicable legislation, it is necessary to agree on the archiving of these actions. Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is made clear in the instruction of the procedure: "b) When the facts are not proven; c) When the proven facts do not constitute, of way show, an administrative violation".

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 313/2018, relating to the Secretary of Penal Measures, Reintegration and Attention to the Victim of the Department of Justice.
2. Notify this resolution to the Department of Justice and communicate it to the complaining union.
3. Order the publication of the resolution on the Authority's website (www.apd.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the denounced entity can file, with discretion, an appeal for reinstatement

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before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/ 2015 You can also directly file an administrative contentious appeal before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating the administrative contentious jurisdiction.

Likewise, the reported entity can file any other appeal it deems appropriate to defend its interests.

The director,

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