

File identification

Resolution of sanctioning procedure no. PS 12/2023, referring to Vilanova del Vallès Town Council.

Background

1. On 10/26/2021, the Catalan Data Protection Authority (APDCAT) received a letter from a municipal group (henceforth, complainant entity) of complaint against Vilanova del Vallès City Council (henceforth, City Council), due to an alleged breach of the regulations on personal data protection .

Specifically, the reporting entity highlighted the following:

- That the City Council had installed a " Video Surveillance System in the 8 points of garbage container islands " in the municipality, which had "come into operation in the middle of June 2020" and that, in its understand, it did not comply "with the legal regulations to put it into operation and capture images to sanction."
- That these container islands are located in a space open to the public road that is not delimited, and allow "to see all the people who could walk by the container island and the vehicles that were driving there, with the consequent capture of registration reading."
- That the captured images had been used to initiate criminal proceedings.
- That before the video surveillance system was launched, the report provided for in article 10 of APDCAT Instruction 1/2009, of February 10, on the processing of personal data through cameras had not been drawn up for video surveillance purposes (henceforth, Instruction 1/2009) .

The reporting entity attached to its letter of complaint, among other things, the following documentation:

- A copy of the application, dated (...)2021 and registered at the City Council no. "...", for which he addressed the mayoress to convey doubts about the "installation of the cameras in the islands of containers located in the pedestrian and vehicle crossing area". It also called for a halt to "the initiation of disciplinary proceedings that use the video surveillance camera system until the legal doubts are resolved."
- A copy of the response signed by the mayor on (...)2021, which, among other issues, reported the following:

"(...) a year ago now, the decision was made to improve the deplorable appearance of the waste collection islands due to the incivility of some residents, while implementing the solution of video surveillance cameras that result had been given by the traffic control.

The necessary measures have been taken to comply with data protection regulations. In each space where a camera is installed there is a sign informing about it (a photograph is attached as an example).

As long as there is no pronouncement by a competent body that questions the system used by the City Council to sanction these uncivil behaviors contrary to the environment, the Municipal Government will continue with the files. (...)."

- A copy of the request dated (...)2021 (entry registration no. "..."), for which the reporting entity requested a "copy of the report prior to the installation of the video surveillance camera system.
 - A copy of the request dated (...)2021 (entry registration no. "..."), through which the reporting entity provided the City Council with two opinions issued by the Authority (CNS 33/2021 and CNS 42/2021), both referring to the installation of video surveillance systems in municipal waste collection areas. Based on these opinions, among other things, the reported entity requested that the City Council disconnect and leave the video surveillance system inoperative, "until all the incidents that make this system not covered by the data protection regulations are resolved (...)", and to stop "the disciplinary proceedings that use this video surveillance camera system until they are resolved and all the documentation required is brought up to date, and that the container islands have been properly demarcated and closed so that the video surveillance system is located and records images only of the interior of the container islands, and not of the public road (...)."
 - A copy of the response signed by the mayor on (...)2021, in which she responded to the reporting entity "that the installed system is considered correct by this Corporation since there is no recording of the public road but of the delimited space where the containers are located, having canceled all other public road angles from the recording of the cameras(...)."
 - A copy of two mayoral resolutions, dated (...)2021 and (...)2021, through which the City Council agreed to initiate two disciplinary proceedings (no. (...) and no. (...)), both for the alleged commission of an offense provided for in Legislative Decree 1/2009, of July 21, which approves the revised text of the Waste Regulatory Law (DL 1/2009). In these resolutions it was stated that, based on the images captured by the video surveillance cameras located on the container islands, in one case it had been possible to identify the offending persons and, in the other, the vehicle that was traveling through the waste collection area and, based on the registration, the alleged offenders.
- 2.** The Authority opened a preliminary information phase (no. IP 430/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to 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 (LPAC), to determine whether the facts were likely to motivate the initiation of 'a sanctioning procedure.
- 3.** In this information phase, on 06/05/02022, among other issues, the reported entity was required to:
- To report on the date of the start-up of the video surveillance system.
 - To report on the purpose of processing images of public roads captured through video surveillance cameras.

- That he report on the place where the 8 islands of containers were located.
 - That they report on whether they had the authorization issued by the General Directorate of Security Administration of the Department of the Interior, and whether the video surveillance service of the garbage was provided by a security company.
 - That he provide a copy of the report provided for in article 10 of Instruction 1/2009, or of the risk analysis or impact assessment related to this data processing.
4. Faced with this requirement, on 23/05/2022 the City Council requested an extension of the 10-day period granted, which the APDCAT granted.
5. On 05/27/2022, the City Council responded to the request in writing in which it stated the following:
- That "The video surveillance system of several container islands started working on August 10, 2020."
 - That "The purpose of the treatment, according to what is published in the Register of Treatment Activities, is the recording of images through video camera systems in order to control illegal dumping in the collection areas of waste."
 - That "the system only records if it detects movement."
 - That "We do not have the authorization issued by the General Directorate of Security Administration of the Department of the Interior, given that the public road is not being recorded but a space delimited in some cases and in others closed by fences of wood."
 - That "An updated risk analysis has been carried out with the result being low risk (attached)."
 - That "Regarding the waste video surveillance service you refer to, we understand that it is the video surveillance service of the 8 container islands. This service is not provided by any security company, but directly by the City Council, so there is no data processor contract."

The reported entity accompanied its letter with the following documentation:

- A copy of the "Report on the Video Surveillance System implemented by Vilanova del Vallès City Council", dated 05/27/2022.
- A copy of the risk analysis dated 05/22/2022 and the subsequent "Report of the conclusions of the Risk Analysis and safety recommendations."
- A copy of the images from the cameras that were used to identify the offenders, within the framework of sanctioning procedures no. (...) and no. (...).
- A copy of the location plan of the 8 container islands, with the photograph of the space where they are located.

- A copy of the recording of the images captured by each of the cameras installed in the container islands on 06/05/2022, which correspond to the Cal Trempat, Can Duli, Can Nadal, Capella, Casa Alta container islands , Roquetes, Sixth of December. Regarding the Can Palau camera "it was not operational on the indicated day due to technical problems."

Based on the images and recordings provided by the reported entity, on the one hand it can be seen that only the Chapel collection island would be sufficiently delimited and surrounded by a wooden fence, but the rest of the collection areas referenced wastes are not closed or sufficiently delimited. On the other hand, all the video surveillance cameras are installed outside the collection area and the field of view of the cameras focuses on the public road; therefore, it makes it possible to capture the image of people passing through the passage areas and vehicles traveling on the road, even if they do not use the waste collection area.

Likewise, it can be seen that the City Council's processing activity register (RAT) records two data treatments through the video surveillance system. On the one hand, the system that responds to the purpose of "(...) preserving the safety of people and property, as well as their facilities", and on the other, another system with the "(. ..) purpose of controlling illegal dumping in waste collection areas" (...)

6. On 05/30/2022, also during this preliminary information phase, the reported entity was required to provide the most recent recording they had stored regarding the camera installed in Can Palau.
7. On 31/05/2022, the reported entity complied with the requirement of 30/05/2022 and provided a copy of the recording of the Can Palau container island dated 24/05/2022. From this recording, it can be seen that this waste collection area is not closed or sufficiently delimited, that the video surveillance camera is located on the other side of the road, that the field of view of the camera focuses on public road and which allows to capture the image of all the vehicles traveling on the road (in both directions of traffic), as well as the people passing through the ditch.
8. On 02/03/2023, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Vilanova del Vallès City Council, for an alleged infringement provided for in article 83.5. a , in relation to article 5.1. a , all of them from Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data (RGPD). This initiation agreement was notified to the imputed entity on 08/03/2023.

In the initiation agreement, the accused entity was granted a period of 10 working days to formulate allegations and propose the practice of evidence that it considered appropriate to defend its interests.
9. On 03/15/2023, Vilanova del Vallès City Council requested a 10-day extension, which the APDCAT granted.
10. On 03/29/2023, the City Council made objections to the initiation agreement.

11. On 07/05/2023, the person instructing this procedure formulated a resolution proposal, for which he proposed that the director of the Catalan Data Protection Authority admonish the Vilanova del Vallès City Council, as responsible of an infraction provided for in article 83.5. a in relation to article 5.1. a , both of the RGPD.

This resolution proposal was notified on 07/06/2023 and a period of 10 days was granted to formulate allegations. The deadline has passed and no objections have been submitted.

proven facts

Vilanova del Vallès City Council installed a video surveillance system, in operation since August 2020, which affects 8 waste collection blocks (Cal Trempat, Can Duli , Can Nadal, Capella, Casa Alta, Roquetes, Sis de Desembre and Can Palau) , in order to control illegal dumping in the waste collection areas and, where appropriate, to exercise the sanctioning authority.

From the documentation and images provided as part of this procedure, it appears that most of the waste collection areas are not closed or delimited, and that the cameras that make up the video surveillance system are installed in the outside the collection area, so that they capture the images of the people passing by and the vehicles that circulate there, regardless of the use they make of the waste collection areas. The City Council used these images to identify people who behaved uncivilly in the dumping of waste in the collection areas and, where appropriate, exercised the power to sanction.

Fundamentals of law

1. LPAC and article 15 of Decree 278/1993 apply to this procedure , according to the provisions of DT 2a of Law 32/2010, of October 1, of the Authority Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.
2. The imputed entity has not formulated allegations in the resolution proposal, but it did so in the initiation agreement. Regarding this, it is considered appropriate to reiterate below the most relevant part of the motivated response of the instructing person to these allegations.

2.1. On the competence of the municipal group to file complaints

In the statement of allegations, the accused entity considered it inappropriate to start this sanctioning procedure based on a complaint by a municipal group of the Vilanova del Vallès City Council. The accused entity referred to article 73.3 of Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL), and added that the action of the municipal groups is circumscribed in internal scope of the corporation ("a efectos de su actura corporativa") not being admitted to an external physical intervention before the Apdcat . In this sense, the accused entity concluded that there had been a violation of article 22, sections 2, 3 and 4 of Law 32/2010 of October 1 of the Catalan Data Protection

Authority, which requires that the sanctioning procedure must be initiated prior to a complaint, since the complaint made by a municipal group would not be valid.

Regarding this, the first thing that was pointed out in the proposed resolution is that, as provided for in article 62 of the LPAC, the complaint is the means by which any person, in compliance or not with a legal obligation, brings to the attention of an administrative body a fact that may justify the ex officio initiation of an administrative procedure.

From here, as provided for in article 63 of the LPAC, it is the competent body (in this case, the Authority) that has the power to initiate ex officio a sanctioning procedure if, within the framework of the previous investigative actions, appreciates enough sufficient indications that an infringement of the data protection regulations has been committed. This, regardless of whether or not it has previously been reported, and of the legal personality of the reporting person.

In this sense, as indicated in the proposal, the City Council misinterpreted article 22 of Law 32/2010, of October 1, on the Catalan Data Protection Authority. The wording of this article states that "The complaint that initiates a sanctioning procedure must be formalized through a reasoned letter and must be duly signed." In accordance with this, article 62.2 of the LPAC establishes that "Denunciations must express the identity of the person or persons who present them and the account of the facts that are brought to the attention of the Administration. (. . .)" That is to say, both rules establish formal requirements for processing the complaint, but without it being possible to infer from this that the official initiation of the sanctioning procedures of this Authority must be done by complaint. What's more, this interpretation would be contrary to what is established by the LPAC (art. 63), which expressly states that "procedures of a punitive nature are always initiated ex officio by agreement of the competent body." Finally, as indicated in the proposal, the letter of complaint that was submitted met the formal requirements that have been indicated.

Finally, when article 73.3 of the LBRL, relating to the statute of members of local corporations, establishes that "for the purposes of their corporate action, the members of local corporations are constituted into political groups", it is not it can be inferred that councilors acting on behalf of municipal groups do not have the capacity to file a complaint with this Authority, if they detect any breach of data protection regulations in the actions of the council.

It is for this reason that this plea is held to fail.

2.2. On the actions taken to reduce the effects of the infringement

Next, the accused entity pointed out that the City Council had installed the video surveillance cameras that are the subject of the present sanctioning procedure in order to improve the collection of waste in the containers corresponding to the eight collection islands, avoiding uncivil behavior in the dumping of waste, without using it for any other purpose. And he explained that until now budget problems have prevented the closure of all waste collection islands, and that the Capella collection point is the only one that was closed at the time the initiation agreement was issued.

In this sense, the accused entity highlighted that the City Council is solving this problem to make the closure effective on the other islands, so that the cameras are limited exclusively to the control of the dumping of waste.

The current regulations - collected in the initiation agreement, in the proposed resolution and in the following section of this resolution, regarding the legal classification of the proven facts - do not enable the installation of a video surveillance system on the road public in an open and non-delimited space, which allows capturing images of the public road, with the purpose of controlling the collection of waste and, where appropriate, exercising the sanctioning authority regarding uncivil behavior related to illegal dumping in the areas of waste collection.

Therefore, as pointed out in the proposed resolution, in this case the data processing could be considered legitimate if the City Council closes and delimits the 8 waste collection islands, so that the field of focus of the cameras only capture the waste collection point and do not capture images of the public road. This, without prejudice to the fact that the City Council must also comply with the rest of the principles and obligations provided for in the regulations for the protection of personal data in the terms provided for in the RGPD, Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), and Instruction 1/2009 .

Finally, in the statement of objections, the accused entity also stated its willingness to collaborate with the Authority and resolve any deficiencies related to this data processing for video surveillance purposes. For this reason, he considered that in this case the filing of the present sanctioning procedure would proceed.

In the resolution proposal it was pointed out that, despite the fact that this Authority positively values the good will of the imputed entity to mitigate the effects of the infringement, the adoption of measures to correct the effects of the infringements does not detract the imputed facts, nor does it change their legal classification. In accordance with what has been set out, it is estimated that this allegation cannot be estimated.

3. In relation to the facts described in the proved facts section, you must go to article 5.1. a of the RGPD, which provides that:

"1. The personal data will be: a) treated in a lawful, fair and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency")."

In this sense, the RGPD provides that all processing of personal data must be lawful (article 5.1. a) and, in relation to this, establishes a system for legitimizing the processing which is based on the need for one of the legal bases established in its article 6.1.

In relation to this, it should be highlighted that the processing of data from video surveillance in order to control the appropriate use of waste collection systems may be enabled by the legal basis of article 6.1. e of the RGPD, justified by the powers provided for in the sectoral regulations and in article 22.1 of the LOPDGDD. But this authorization only protects video surveillance camera systems that are installed in closed and delimited spaces, that is to say, that are not on public roads and do not capture more images than are necessary for this purpose.

In this case, the video surveillance system is located on the public road, in areas that result from passage that allow images to be captured of both the people and the vehicles that travel there, regardless of whether they make use of the waste collection areas.

Regarding this , sections 2 and 6 of article 22 of the LOPDGDD, relating to treatments for video surveillance purposes, provide that (the bold is from the APDCAT):

"2. Images of the public road can only be captured to the extent that it is essential for the purpose mentioned in the previous section. However, it is possible to capture the public road in a greater extent when it is necessary to guarantee the safety of goods or strategic installations or infrastructures linked to transport, without in any case the capture of images from inside a private home.

(...)

6. The processing of personal data from the images and sounds obtained through the use of cameras and video cameras by the security forces and bodies and the competent bodies for surveillance and control in penitentiary centers and for control , the regulation, monitoring and discipline of traffic is governed by the legislation transposing Directive (EU) 2016/680, when the treatment has the purposes of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, including protection and prevention against threats to public security. Outside of these cases, this treatment is governed by its specific legislation and additionally by Regulation (EU) 2016/679 and this Organic Law. "

For its part, article 5.4. *b* of Instruction 1/2009 does not consider legitimate:

"b) The capture of images of people on the public road, unless they take it to term the security forces and bodies in accordance with its regulations specific The incidental capture of images of the public road for the surveillance of buildings or facilities is only legitimate if it is unavoidable to achieve the purpose of monitoring the building or installation."

In accordance with what has been explained, the capture of images on public roads corresponds only, and in principle, to the security forces and bodies, for certain purposes linked to the prevention, investigation, detection or prosecution of criminal offenses and the protection and prevention of threats against public security, in accordance with what is referred to in its applicable specific regulations (LO 7/2021, of May 26).

In this case, the system of video surveillance cameras installed in the waste collection areas, which would allow to capture images of the public road, was not managed by a police force. In turn, the City Council had not entrusted the video surveillance service to a security company, so that the assumption provided for in article 42 of Law 5/2014, of April 4, on private security did not apply.

Therefore, given that the majority of waste collection islands, identified in the section referring to the facts that motivate the initiation of the procedure, are not closed or delimited, and that the cameras that make up the video surveillance system are installed outside the collection island and capture images of the public road, the City Council would not be authorized to capture the images in these spaces. Consequently, it would also not be legitimate to deal with these images, captured illegally and, where appropriate, to sanction the illegal dumping of waste.

The imputed facts could be constitutive of two infringements, both related to the principle of legality: the first, due to the fact of capturing images of the public road through the system of video surveillance cameras located in islands of containers that were not closed or delimited; and the second, when he dealt with the images captured to exercise the sanctioning authority against residents of the municipality.

Notwithstanding the above, it is considered that there is a direct connection between both offenses, so that one would be a necessary means to commit the other. Therefore, it is estimated that we would be faced with a case of medial contest of infringements, regulated in article 29.5 of Law 40/2015, of October 1, on the legal regime of the public sector, which establishes that in these cases only one penalty should be imposed, the one corresponding to the most serious infraction of those allegedly committed. In this case, both offenses are provided for in article 83.5. *a* of the RGPD and qualified as very serious in article 72.1. *b* of the LOPDGDD.

Given the specific circumstances of the case, it is considered that the conduct described in the imputed facts should only be sanctioned for the offense that is considered the main one, which is the violation of the principle of legality regarding the installation of the video surveillance system in areas of passage that would allow capturing images of the public road.

During the processing of this procedure, the facts described in the proven facts section have been proven, which are considered to constitute a single infringement according to the provisions of article 83.5. *a* of the RGPD, which typifies the violation of " the basic principles of treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9", among which is the principle of legality of treatment (art. 6 GDPR).

The conduct addressed here has been included as a very serious offense in article 72.1. *b* of the LOPDGDD, in the following form:

"b) The processing of personal data without any of the conditions for legality of the processing established by Article 6 of Regulation (EU) 2016/679."

4. Article 77.2 of the LOPDGDD provides that, in the case of infractions committed by those responsible or in charge listed in article 77.1 of the same law, the competent data protection authority:

"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected.

The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."

In similar terms to the LOPDGDD, article 21.2 of Law 32/2010 determines the following:

"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its

effects . In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any."

By virtue of this faculty which is attributed to the director of the Authority, the Vilanova del Vallès City Council should be required to, as soon as possible, and in any case within a maximum period of one month from the day after the notification of the resolution issued in this procedure, certify that it has carried out the necessary actions to close and delimit the 8 waste collection islands of the municipality. Also, that the video surveillance cameras that are installed in these collection areas only focus on the closed and delimited space, without capturing images of the public road.

Compliance with this measure must be proven by providing a current photograph of the space where the 8 blocks are located - or any other documentation that certifies the execution of this action - as well as a recent recording of the images captured by each of the cameras installed on these islands.

All this, without forgetting that the City Council must also comply with the rest of the principles and obligations provided for in the personal data protection regulations in the terms provided for in the RGPD, the LOPDGDD and Instruction 1/2009.

resolution

For all this, I resolve:

1. Admonish the Vilanova del Vallès City Council as responsible for an infringement provided for in article 83.5. a in relation to article 5.1. a , both of the RGPD.
2. To require the Vilanova del Vallès City Council to adopt the corrective measures indicated in the 4th legal basis of this resolution and to accredit before this Authority the actions it has taken to comply with them.
3. Notify this resolution to Vilanova del Vallès City Council.
4. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.
5. Order that the resolution be published on the Authority's website (apdcat.gencat.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 articles 26.2 of Law 32/2010 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, the accused entity can file an appeal 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. An administrative contentious appeal can also be filed directly before the administrative

contentious courts of Barcelona, within two months from the day after its notification, in accordance with Law 29/1998, of July 13 , regulator of administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended under the terms provided for in article 90.3 of the LPAC.

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

The director

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