

938-0419

Procedure No.: PS/00115/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

948-160419

FACTS

FIRST: LLEIDA CITY COUNCIL GUARD (hereinafter, the
claimant) dated December 11, 2018 filed a claim with the Agency
Spanish Data Protection, motivated by the treatment of data carried out to
through cameras of a video surveillance system whose owner is A.A.A. with NIF
***NIF.1 (hereinafter the claimed) installed in ***ADDRESS.1.

The reasons on which the claim is based are the "installation of a security camera
video-surveillance oriented towards public roads" without just cause.

"The Agents of this Unit XXXX-YYYY-ZZZZ (UNIPA) check the
facts and proceed to notify by Act A-10GULL the owner of the camera Mr.
A.A.A. (...) how to proceed to obtain the corresponding authorization to
legalize the situation, and that in no case can record the public highway. In this
moment he (...) withdraws the camera, promising that he will not focus on the road again
public.

On November 12, 2018, the complainant reports again that the
camera have been repositioned in the same way, refocusing on the road
public" (folio nº 2).

SECOND: In view of the reported facts, in accordance with the evidence
that is available, the Data Inspection of this Spanish Agency for the Protection of

Data considers that the treatment of personal data that is carried out by the denounced through the chamber to which the complaint refers, does not meet the conditions imposed by the regulations on data protection, for which reason the opening of this sanctioning procedure

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THIRD: On April 30, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 5 of the RGPD, typified in Article 83.5 of the RGPD.

FOURTH

denounced by means of which he alleges the following:

: On 06/05/19, this body receives written allegations from the

“I put the unusable camera back in deterrent mode for possible squatters, thieves or malicious people who could damage or enter my property.

Comment that 2 weeks ago the local police had to evict some squatters of the house next to mine, and a few months ago there was a wave of robberies in the neighborhood, where they entered the houses at night while the owners slept, hence my decision to put everything back and it didn't work, in this case it didn't did not comply with any of the regulations of which I was informed by the officials, in the face of the impossibility of capturing any image”

“Upon receipt of your certified letter "Agreement to start sanctioning procedure”, and understanding according to what was reported, that the agents tried to contact me on several occasions, to my surprise, because on those dates I was at home almost every hour of the day, I decided to go to the Customer Service Office

Citizen of my city "Lleida".

Making a request with entry registration number ***ENTRADA.1 on the 27th of May 2019, where he argued the same as in this document, and requested the presence of the previously numbered agents, so that they would have full access to my home and corroborate what was said, where the camera is completely empty of plate electrical, and totally unusable (image 3).

I also attach the following images, where I show how the camera from the street, where I show that I have an approved plate where I notice of the presence of a video camera, already present when the agents, when they saw her they called me at the telephone number indicated on the license plate, and we were able to talk and see each other after a few minutes, because it was very close".

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

In this proceeding, the following are considered proven facts:

FACTS

First: On 12/11/18, this Agency received a claim from the Guard Urbana (Lleida) by means of which it transfers the following facts:

"The Agents of this Unit XXXX-YYYY-ZZZZ (UNIPA) check the facts and proceed to notify by Act A-10GULL the owner of the camera Mr. A.A.A. (...) how to proceed to obtain the corresponding authorization to legalize the situation, and that in no case can record the public highway. In this moment he (...) withdraws the camera, promising that he will not focus on the road again public.

3/6

On November 12, 2018, the complainant reports again that the camera have been repositioned in the same way, refocusing on the road public" (folio nº 2)".

Second: It is accredited as the main person in charge of the A.A.A. installation, who acknowledges being responsible for the device in question.

Third: It is accredited that an informative poster is available, although not adapted to the regulations in force, in a visible area.

Fourth: It has not been possible to demonstrate that the camera was operational at the time of the facts, given that the defendant alleges that he placed it while it was not operational, providing photography for this purpose.

Fifth. Provide documentary evidence (Doc. No. 1) that proves that it is made available of the local Security Forces and Bodies to verify in situ the device in question.

Sixth: The images provided confirm the installation of a video device surveillance, oriented disproportionately towards public space, so which externally (from the sidewalk) creates the feeling of recording the sidewalk and adjoining spaces.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDPGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

In the present case, we proceed to examine the claim dated 12/11/18 by means of which the following is transferred as the main fact:

“The Agents of this Unit XXXX-YYYY-ZZZZ (UNIPA) check the facts and proceed to notify by Act A-10GULL the owner of the camera Mr.

A.A.A. (...) how to proceed to obtain the corresponding authorization to

legalize the situation, and that in no case can record the public highway. In this moment he (...) withdraws the camera, promising that he will not focus on the road again public.

On November 12, 2018, the complainant reports again that the camera have been repositioned in the same way, refocusing on the road public" (folio nº 2).

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The facts are specified in the installation of a video-surveillance camera focusing on public roads, disproportionately, having been previously warned by the State Security Forces and Bodies.

The denounced in writing of allegations dated 06/05/19 states that the camera is unusable, which keeps it for deterrent reasons against certain thefts events in your neighborhood.

It also alleges that it has filed a brief dated 05/27/19 before the Lleida City Council, so that Local Police Agents can move to the scene of the events and check, where appropriate, the inoperability of the device. (provides documentary evidence no. 1).

It should be noted that individuals cannot obtain images of public space, thus affecting the right to privacy of pedestrians who transit freely along the sidewalks and streets of the municipal area.

The facts described suppose an affectation to the content of article 5 letter c) RGPD, which provides: "Personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which

that are processed ("data minimization")

It is necessary to remember that video-surveillance cameras are not a "toy" but a device, which can obtain images from third parties, affecting your privacy, being the purpose of the same in any case to fulfill a dissuasive function for the protection of private housing, but not invading public space without cause justified.

The person responsible for the installation of this type of device fully assumes the legal consequences of your actions, when you decide to install a device of these characteristics, and must comply with current regulations

III

The principle of presumption of innocence prevents imputing an administrative offense when proof of charge accrediting the facts that motivate the imputation or of the intervention in the same of the presumed offender. Applying the principle "in dubio pro reo" in case of doubt regarding a concrete and determined fact, which obliges in any case to resolve said doubt of the most favorable to the interested party.

The presumption of innocence must govern without exceptions in the legal system sanctioning and must be respected in the imposition of any sanctions, since the exercise of the *ius puniendi* in its diverse manifestations is conditioned to the game of evidence and a contradictory procedure in which they can defend themselves own positions. In this sense, the Constitutional Court in its Judgment 76/1990, of 04/26, considers that the right to the presumption of innocence entails:

"that the sanction is based on acts or means of proof of charge or incriminating of the reproached conduct; that the burden of proof corresponds to the one who accuses, without that no one is obliged to prove his own innocence; and that any insufficiency in

the result of the tests carried out, freely assessed by the

sanctioning, must be translated into an acquittal pronouncement.

The presumption of innocence governs without exceptions in the sanctioning system and has

to be respected in the imposition of any sanction, whether criminal or administrative

(TCo 13/1981), since the exercise of the sanctioning right in any of its

manifestations, is conditioned to the test game and to a procedure

contradictory environment in which their own positions can be defended.

Pursuant to this principle, no penalty may be imposed on the basis of the

guilt of the accused if there is no activity to prove the charge, which in the

appreciation of the authorities or bodies called to resolve, destroy this

presumption (TCo Auto 3-12-81).

IV

According to what has been argued, it can be concluded that the installed device is not

operational, so that it does not process personal data, fulfilling a function

dissuasive against hypothetical thefts in the home.

It has not been possible to prove that it was operational at the time of

the facts, because the only thing that the Local Police accredits is the presence of the device,

but not its operability towards public roads.

It is recommended that it be oriented, as indicated by the Police

Local (Lleida) into your home, even if you don't record, or proceed to

reinstall it in a less harmful way, since otherwise it can cause new

complaints from nearby neighbors, who are intimidated by this class of devices,

being able to be a conduct object of analysis in judicial headquarters (civil) by the presumed

damages that may be caused to third parties without just cause.

Any modification or incident with the reported device must be

communicated to the Security Forces and Bodies of the town (Lleida) to the

effects of your timely knowledge (eg in case of reinstalling it), as soon as you have place.

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 decree the ARCHIVE of this procedure, since

the commission of any administrative infraction must be accredited.

SECOND: NOTIFY this resolution to Don A.A.A. and REPORT the result of the actions to the denouncing party--GUARDIA URBANA DEL

LLEIDA CITY COUNCIL----

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In accordance with the provisions of article 50 of the LOPDPGDD, 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 LOPDPGDD, 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