

Procedure No.: PS/00378/2018

## RESOLUTION OF PUNISHMENT PROCEDURE

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

Mrs. A.A.A., by virtue of a claim transferred to this body by D.G.

CIVIL GUARD, SAN PEDRO DE MERIDA POST (hereinafter, the claimant)

and based on the following:

### BACKGROUND

FIRST: The claim filed by the claimant (DG. Civil Guard) has

entry dated July 19, 2018 in the Spanish Agency for Data Protection.

The claim is directed against A.A.A. with NIF \*\*\* DNI.1 (hereinafter, the claimed one).

The grounds on which the claim is based are "installation on your property

particular with orientation towards the public thoroughfare "with the purpose of obtaining images of

your vehicle", without having any informative poster and affecting the right of the

pedestrians without just cause.

SECOND: In view of the known data, the Subdirectorate General for Inspection

of Data proceeded to carry out preliminary investigation actions for the

clarification of the facts in question, in accordance with the power recognized

in art. 58.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council

of April 27, 2016 regarding the protection of natural persons in what

regarding the processing of personal data and the free circulation of these data and

which repeals Directive 95/46/EC (General Data Protection Regulation)

(hereinafter GDPR).

The claim transferred to this body provides the complaint of a neighbor

of the locality, for the installation towards his garage of some type of device of

capturing images without just cause, which may affect your right to

privacy.

THIRD: On December 3, 2018, 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, in connection with article 6 of the mentioned normative text, infraction typified when treating personal data outside of permitted cases affecting the rights of third parties without just cause and disproportionate to the purpose of the system, which may lead to the imposition administrative sanction pursuant to art. 58.2 in connection with article 83 of the GDPR.

FOURTH: On 01/08/2019, this body receives a written manuscript from response of the accused party by means of which he states the following:  
“The location in the home of my property cannot be considered as an installation because it has never worked and therefore they have not captured

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pictures of people/public places (...)

I will proceed to immediately remove the camera from public thoroughfares...because the I have withdrawn earlier.

Certified photocopies of the Appearance Proceedings by the damages that are occurring in the vehicle you own (...).

For the above: I request that this writing be admitted in time and form and proceed to dictate a new Resolution, filing the actions and the possible infraction (...)."

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 written document from the Armed Forces and

State Security Forces (Civil Guard-San Pedro de Mérida Post)

motivated by the processing of data carried out through cameras of a security system.

video surveillance, installed in your private property facing the road

public "for the purpose of obtaining images of your vehicle", without having a poster

informative and affecting the rights of pedestrians without just cause.

SECOND: It is accredited as the main responsible for the installation of a

image capturing device Doña AAA.

THIRD: It is proven that the accused has an associated web-cam

to the laptop looking outside (Exhibit 1).

FOURTH: No image has been provided of what, in his case, was captured with the

mentioned device, although it states "that it will proceed to withdraw immediately from

public roads"; I do not attach any photograph of the removal of the window of the

device in question.

FIFTH: The reason for the installation of the external device is caused according to

declares the one denounced for damages and flaws in the vehicle of its property, the

which usually parks in front of it.

In support of his statements, he provides documentary evidence (copy of

Complaints before the State Security Forces and Bodies) for various damages

in his vehicle, access door to the house and threats, among other issues, without

that the presumed material author of the same may specify (Annex Doc. I).

#### 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

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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

The defendant is imputed the commission of an infraction for violation of article 5 of the RGPD, which states that: "Personal data will be treated:" adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

Article 6.1 of the RGPD (Legality of the treatment) establishes the assumptions specific conditions under which the processing of personal data is considered lawful. the interested.

The treatment of images in public places can only be carried out -in your case and prior compliance with the legally enforceable requirements-, by the Forces and Security Forces, unless the exception established in article 4.3 operates of Instruction 1/2006, of November 8, of this Agency, which establishes:

"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 intended purpose.

It should be noted that individuals can install video surveillance cameras, but they cannot be oriented towards the public road and/or private space of third parties, affecting their privacy without just cause.

### III

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.”

Article 58. 2 letter d) within the corrective powers of each Authority of control allows “Ordering the person in charge or in charge of the treatment that the

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processing operations comply with the provisions of this Regulation, when proceeding in a certain way and within a specified period”.

In the present case, the facts are limited to the installation of some type of device in the window owned by Doña A.A.A., facing the road public without just cause.

The defendant does not clarify to this body the type of device she has, if well in a demonstration before the Security Forces and Corps acknowledges that he has a web-cam, which sometimes directs from the window to the outside, being able to obtain images of public roads.

Article 1 "in fine" of Instruction 1/2006 (AEPD) provides the following: "The references contained in this Instruction to video cameras and cameras will be understood also made to any analogous technical means and, in general, to any system that allows the treatments foreseen in it".

A device such as the one described allows obtaining images in time real, as well as the recording of the same to the hard disk of the personal computer, which would imply a "processing of personal data" without just cause, especially if the It is oriented towards the public highway.

The defendant provides various police reports in which she states that has been suffering various acts of vandalism (breaking of the door, scratches on the vehicle, firecrackers, etc), which in his opinion would justify the placement, in order to prove the author of the denounced acts.

This organism has manifested itself on several occasions towards acts vandalism carried out furtively by third parties in bad faith, establishing that A restrictive interpretation of the regulations supposes a situation of defenselessness to the victim of them.

In cases such as those described, the contribution, if any, of the images has been to carry out the State Security Forces and Corps or Investigating Judge

closest to the place of commission of the acts, to which it corresponds to assess the  
themselves, well let's not forget that we are talking about an alleged Crime of damages  
(art. 263 CP LO 10/1995).

Having stated the foregoing, it should be noted that there are means for the protection of the  
vehicle, such as the installation of an audible alarm or a camera  
hidden inside it, temporarily.

In any case, professional advice would be recommended.

in the matter, in order to provide certain protection to the property, through the  
installation of a camera system, which must comply with current legislation, this  
is, the cameras must be oriented towards your private property, have  
informative device in visible area and the obtaining of images must be  
proportionate to the purpose of the system.

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The chambers can be exterior, with a preferential orientation towards the  
space adjacent to the dwelling, so as to capture any damage to the  
entrance lock of the same or allows to identify the alleged perpetrator of the acts  
vandalism

The essential thing is that at least one informative poster be placed in a visible area,  
indicating that it is a video-surveillance zone and adopting the necessary measures  
so as not to intimidate the privacy of the neighbors.

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In accordance with the foregoing, it is proven that the defendant has

a device facing public roads, without just cause, although it is

acknowledges that it has been the victim of various acts of vandalism.

This, however, does not justify any measure adopted by the defendant,

given that the possibility of obtaining images of the possible

perpetrators, through less intrusive means of the privacy of their neighbors, who may

be intimidated by the presence of the device in question.

To the above, add that the mere statements made are not

sufficient to determine whether or not the effective withdrawal of the device has proceeded in

question, given that it states "it will proceed to remove it from public roads", without accompanying

no document (eg photographic evidence with date and time) that corroborates such

extreme.

This being the reason why it is considered reasonable to proceed to warn the

denounced in the exposed terms, having to withdraw immediately in its case the

web-cam of the window and, where appropriate, you must prove such extreme before this

organism (eg contribution of photograph with date and time of the window where it was

device installed).

You may, in your case, if you deem it appropriate, request advice from this

body, providing all the necessary data, or raise the issue with the

Forces and Bodies of Security of the locality, in order that the installation of a

camera system can fulfill the intended function and do not leave it in a

helpless situation in the face of the acts of vandalism described.

Finally, both parties are reminded that it is advisable to adapt their

conduct to the minimum rules of good neighborliness, avoiding instrumentalizing the

public bodies, in matters of neighborhood quarrels, far from the guardianship

effectiveness of the rights that we are obliged to protect.

the Director of the Spanish Data Protection Agency RESOLVES:



FIRST: PROCEED to WARN Ms. A.A.A., for the infraction of article 5

RGPD, in connection with article 6 of the aforementioned normative text, ordering that

proceed by virtue of the provisions of article 58.2 letter d) RGPD:

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-Removal of the image capture device from the exterior window of the

property facing public roads without just cause.

-Contribution of documentary evidence (photograph with date and time) that proves the

effective removal of the same from the window of the property.

SECOND: NOTIFY this resolution to Ms. A.A.A. and, according to art. 77.2

of the RGPD, INFORM the claimant about the result of the claim.

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

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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