

□ Procedure No.: PS/00420/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On May 28, 2019, it had entry in this Spanish Agency of
Data Protection a document presented by Don A.A.A. (hereinafter the
claimant), through which he makes a claim against Doña B.B.B. with NIF
***NIF.1 (hereinafter, the claimed one), for the installation of a
video surveillance installed at ***ADDRESS.1, with indications of a possible
breach of the provisions of the data protection regulations.

The reasons that support the claim and, where appropriate, the documents
provided by the claimant are the following:

The residents of the lower right have placed a video surveillance camera in
an area of common use and focusing on a community dwelling, without authorization
of the community of owners and without putting up any video-surveillance area sign. if they
He informed them that they had to remove the camera and they ignored it. They put up posters on the
Community advising of the need for authorization of the majority of members
of the Community to put video cameras in common areas and ripped them out.
It provides photographs and a video of the camera.

Subsequently, on December 10, 2019, the claimant has exposed
that the camera remains in the same place and provides a new photograph.

SECOND: Prior to the acceptance of this claim for processing, it is
transferred the claimed, in accordance with the provisions of article 65.4 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD).

The request for information has not been answered.

THIRD: The claim was admitted for processing by means of a resolution dated March 19, September 2019.

FOURTH: On 01/07/2020, the Agreement to Start the

PS/00420/2019 for the alleged installation of a video surveillance camera that could

It could be illegal and lacking an informative poster, conduct contrary to the content of art.

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2/5

5.1 c) and 13 of the RGPD, being typified in art. 83.5 a) RGPD, being the same ob-subject to notification for the appropriate legal purposes.

FIFTH: On 01/13/2020, this Agency received a written statement of allegations from the

denounced stating that the camera does not work, is dissuasive and lacks

of light. The Police came with another reason, and verified that he does not have a power outlet for his functioning. It is something that the complainant knew because he was informed of it.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), recognizes each

Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the

LOPDGDD, the Director of the Spanish Data Protection Agency is

competent to initiate and resolve this procedure.

In the present case, we proceed to examine the claim dated 05/28/19

by means of which the following is transferred as the main fact:

“The residents of the lower right have placed a video surveillance camera in an area of common use and focusing on a community dwelling, without authorization of the community of owners and without putting up any video-surveillance zone sign”.

The facts described above suppose a violation of art. 5.1 c)

RGPD that 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");

Individuals can install video-surveillance cameras, although they are responsible that they comply with current legislation, and must be properly oriented towards private space, not being able to obtain images of the public road.

On the other hand, in accordance with the provisions of article 22 of the LOPDGDD, referring specifically to the "Processing for video surveillance purposes", the treatment of images in public places can only be carried out -if applicable and pre-saw compliance with the legally enforceable requirements-, by the Forces and Bodies of Security, unless the exception established in the aforementioned article 22 operates of the LOPDGDD for individuals or legal entities, public or private, respecting do the conditions required in said article.

Likewise, this type of “device” must have the mandatory information sign. in a visible area, indicating the person responsible for the file to whom you can address se, informing citizens of their rights.

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3/5

With this type of cameras you cannot control the common areas of a Community of owners.

On January 7, 2020, a brief was received containing the allegations of the complaint.

ciada stating that it is a dissuasive camera, in a place where there are no light socket fact already known by the claimant.

Consequently, there has been no processing of personal data, fulfilling a merely dissuasive function.

It should be remembered in relation to this type of device, the recent Senten-Supreme Court, Civil Chamber (STS 3505/2019, 11/07/19) "that the chambers false security marks are also an illegitimate intrusion on privacy given that those affected do not have to endure "permanent uncertainty" on whether or not the device is operational."

"The plaintiff's right to the tranquility of his private life includes also that of not having to endure a permanent uncertainty about whether the camera oriented towards his farm is operational or not, since its external appearance asks to verify it and, on the other hand, the defendant would always have the possibility of substituting replace the non-operative chamber with another operative one".

"For the same reasons, the installation of the camera facing the garden of the plaintiff cannot be considered an exercise of a ius usus inocui in the field of neighborhood relations, because far from being innocuous, it objectively disturbed, and without necessity, the life of the plaintiff."

So this type of behavior can have repercussions in other areas.

spheres of law, by affecting the privacy of third parties, who are intimidated by

this type of device, so it is recommended that they be exclusively oriented towards their particular property, thereby avoiding new complaints with the consequent cost for the person in charge of the installation.

These types of devices can fulfill a “deterrent” function, having as a limit the proportionality of the measure, which is met by avoiding intimidating third parties. zeros and being oriented towards the main strategic points of the lived (vgr. orientation towards public roads, adjoining windows, etc.) is not allowed).

III

The principle of presumption of innocence prevents imputing an administrative infractionative 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 in the manner more 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

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4/5

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 punisher and must 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 contradictory procedure 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

In accordance with the foregoing, it can be concluded that the denounced device is of ca-
“simulated” character, not being endowed with the capacity to obtain or record an image al-
guna, so that since there is no "data processing" it is not possible to speak of conduct
infringing within the scope of the regulatory framework of data protection,
without prejudice to its analysis in other legal spheres, which is why we proceed to the
File of this procedure.

Therefore, according to the above,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE this procedure, as the commission is not accredited
of any administrative violation.

SECOND: NOTIFY this resolution to Doña B.B.B. and REPORT the re-
result of the performances to Don A.A.A.

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.

48.6 of the LOPDGDD, 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 period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

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5/5

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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of
through the
Sea Spain Marti
Director of the Spanish Data Protection Agency
C/ Jorge Juan, 6
28001 – Madrid
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