

□ Procedure No.: PS/00022/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Mrs. A.A.A. and Mrs. B.B.B. (hereinafter, the claimants) dated 12
December 2019 they filed a claim with the Spanish Agency for
Data Protection.

The claim is directed against the resident of the town C.C.C. with NIF
***NIF.1 (*hereinafter, the claimed one).

The grounds on which the claim is based are “installation of a device that
allows the capture of a transit zone without justified cause, affecting with the
himself to his freedom of movement” (folio nº 1).

Along with the claim, documentary evidence is provided (Annex I. Photographs No.
1-3) that certify the presence of the device and the absence of any poster in a
transit zone.

SECOND: In view of the facts denounced in the claim and the documents
data provided by the claimant, the Subdirector General for Data Inspection pro-
vided to carry out preliminary investigation actions for the clarification
of the facts in question, by virtue of the powers of investigation granted to the
control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation
General Data Protection, hereinafter RGPD), and in accordance with the provisions
ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed

that the data controller is the claimed party.

THIRD: After consulting the database of this Agency, there is a procedure

prior associated with the aforementioned defendant, with reference number PS/00170/2019

which ended with the following literal tenor:

“WARN (PS/00170/2019) Mr. C.C.C. for infringement of the content of the

art. 5.1 c) RGPD, by having a video-surveillance device oriented towards

public area, offense typified in article 83. 5 a) RGPD, being punishable by

in accordance with art. 58.2 GDPR.

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2.- REQUEST D.C.C.C. so that within a month from this act of

notification:

☐ Accredited the technical characteristics of the installed device, as well as that the

It conforms to current legislation.

☐ Failing that, you must prove the withdrawal of the same or, where appropriate, the

reorientation towards their private space exclusively.”

FOURTH: On March 19, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the

GDPR.

FIFTH: On 03/17/20 collaboration is requested from the Security Forces and Corps

State Security, so that those displaced to the scene of the events carry out the themselves, as well as the legality of the system, without any response having been given to day of date.

SIXTH: On 09/11/20 the request for collaboration to the Directorate is reiterated General Guardia Civil (**LOCATION.1) without any answer having been given to date day.

SEVENTH: When the database of this organization was consulted on 10/07/20, no received any complaint in this regard.

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 12/12/19 a Complaint is received in this body transferring the pre-presence of a device, which could be a camera, with presumed affectation to a transit area through which the complainant(s) travels.

Second. Don C.C.C. is identified as the main responsible for the installation.

Third. The presence of the device is proven, although it has not been possible to prove that it is a video surveillance camera or that it is operational.

Fourth. There is no accredited evidence that it has an informative poster, indicating the responder of the treatment in its case of the images.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

On 12/12/19, this Agency received a new Complaint of the aforementioned, stating that the accused "has not removed" the device from the place of emplacement-proceedings, proceeding to formulate a new complaint against the resident of the town referred to, cited above.

The facts described above may affect the content of the art. 5 letter c) RGPD, which provides: "The 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")".

Cameras installed by individuals should be oriented preferably towards their private space, counting on the mandatory informative distinctive to the appropriate legal effects.

The individual responsible for the installation must be able to accredit before this Control Authority that it complies with all legal requirements two, indicating where appropriate the reason for the installation.

In the case of a video-surveillance camera, it must have the mandatory informative badge, placed in a visible area indicating that it is a living space. deo-watched.

III

In accordance with the evidence available in this proceeding, sanctioning party, it is considered that the defendant has installed some type of device recording with obvious orientation towards a public transit area, without cause

justified.

The evidence provided allows verifying the presence of the device, the intentionality in the installation as well as the orientation without justified cause towards space public, assuming the "inconvenience" to third parties.

At first it seems that the defendant has a motion detector in a transit area, which allows you to obtain images (photographs) of all those who travels along the road attached to his home, it is well that it is mere assumptions that have not been able to be accredited by this body.

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IV

The principle of presumption of innocence prevents imputing an administrative offense when proof of charge accrediting the criminals has not been obtained and verified.

facts that motivate the imputation or the intervention in them of the presumed infraction thor. Applying the principle "in dubio pro reo" in case of doubt regarding a fact concrete and determined, which obliges in any case to resolve said doubt in 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).

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In accordance with the above, it has not been possible to prove the administrative infraction described, despite the efforts of this Agency to verify the same, reason by which it proceeds to order the FILE of the same.

In any case, the complainants are recommended to transfer the "facts" to the nearest State Security Forces and Bodies so that they can where appropriate, verify the same and transfer them to this Agency in case the problems persist. same, duly documented.

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:

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FIRST: ORDER the FILE of the present procedure, since it has not been accredited

tad the administrative infraction subject to transfer.

SECOND: NOTIFY this resolution to Don C.C.C. and REPORT the result

statement of the proceedings to the complainants Doña A.A.A. and Mrs. B.B.B.

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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month

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

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

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 LPA-

CAP, the firm resolution may be provisionally suspended in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the city
tada Law 39/2015, of October 1. You must also transfer to the Agency the documentation
certifying the effective filing of the contentious-administrative appeal. Yes
the Agency was not aware of the filing of the contentious-administrative appeal
nistrative within two months from the day following the notification of the pre-
This resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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