

938-0419

Procedure No.: PS/00108/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Mrs. A.A.A. (hereinafter, the claimant) dated February 13, 2019
filed a claim with the Spanish Agency for Data Protection, motivated by
the processing of data carried out through cameras of a video surveillance system
whose presumed owner is B.B.B. with NIF ***NIF.1 (hereinafter the claimed) installed
at PROPERTY ENTRANCE ***ADDRESS.1.

The reasons on which the claim is based are "installation of a security camera
video-surveillance" without just cause in the entrance area of a property for private use.
shared, without having any information poster.

Along with the claim, provide documentary evidence (photographs No. 1 and 2) that
accredit the installation of some type of device.

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 chambers 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.

THIRD: On June 7, 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 5.1.c) of the RGPD, typified in Article 83.5 of the

GDPR.

FOURTH: On 06/25/19, this Agency received a written statement of allegations from the defendant stating the following:

"It is true that in 2014, three video cameras were installed-surveillance at "****LOCAL.1", property of the appearing party (...).

The complainant is the niece of the appearing party and co-owner of the property in which the cameras are installed. The complainant has full knowledge from the very installation of the security cameras, that these were never were going to be connected, also knowing the reasons for their installation and agreeing with them.

The bad relations that arose subsequently between the claimant and the appearing, have given rise to the Ordinary procedure indicated with the number 505/2018, followed up before the Court of First Instance No. 2 of Santoña.

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In view of the foregoing, only the Archive of these actions, as no infraction has been committed.

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 02/13/19 a claim is received at this Agency through the which is transferred as the main fact "installation of camera (s) without just cause" being able to affect the right to privacy of the complainant.

Second. It is identified as the main person in charge Doña B.B.B., which does not

denies the facts, acknowledging the installation of "three cameras" for reasons of property security.

Third. It is proven that the camera system denounced is not operational, attached documentary evidence (Doc. 2) technical report that accredits such end.

Fourth. It has not been verified that any image of the complainant or of a third party has been obtained from the denounced system.

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 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 analyze the claim dated 02/13/19 by means of which the main fact is transferred as "installation of a camera of video-surveillance" without just cause.

The facts described above may imply an affectation of art. 5.1 c)

RGPD, which provides:

"Personal data will be: c) adequate, pertinent and limited to the necessary in relation to the purposes for which they are processed ("minimization of data").

Cameras installed by individuals

must be oriented

preferably towards their private space, with the distinctive mandatory informative for the appropriate legal purposes.

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

The party denounced in a pleadings brief (06/25/19) acknowledges the installation of a video-surveillance system, although it states that it has never operational state.

Provides documentary evidence (Doc. No. 2) that certifies that the camera system is not operational, being the same signed by the Technician responsible for the installation of it.

It should be remembered that the lack of "data processing" of a personal nature makes that we are not faced with an administrative infraction within the framework of the matter that concerns us, given that the system is not operational, fulfilling a function merely "dissuasive".

It is the responsibility of everyone who installs a security camera system because it conforms to the regulations in force, and in the case of false or non-operative cameras that they do not affect the sphere of rights of third parties that can be seen "intimidated" by this type of device in the belief of being watched and recorded.

The conduct described above, although it is not administratively sanctionable, may be subject to prosecution in a civil court, where the parties can if it deems it appropriate, put forward the pertinent allegations and evidence.

This body reminds the accused party that the camera (located in the interior of the building) with shared access, must be installed in such a way that it does not harms the opposing party (complainant), and must try to the extent possible possible an installation that allows it to fulfill the dissuasive function that is pretends and simultaneously not to bother the complainant, who is "intimidated" by

the same in the belief of being subject to recording and / or control in the access / exit of the property.

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:

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"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

In accordance with the foregoing and analysis of the allegations made and the evidence provided, it can be concluded that the denounced system is not operational, fulfilling a mere dissuasive function, so that there is no "processing of data of personal character".

Finally, the parties are reminded of the transcendence of the rights in game, and must avoid instrumentalizing this body for "family" disputes or well by resolving them in the appropriate judicial instances (vgr. SAN 04/01/11 Rec. 2223/2010).

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 verify the commission of any administrative infraction.

SECOND: NOTIFY this resolution to Doña B.B.B. and REPORT the result of the actions to the denouncing party Ms. A.A.A.

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

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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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