

□ File No.: EXP202104238

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (*hereinafter, the complaining party) dated November 5,
2021 filed a claim with the Spanish Data Protection Agency. the re-
outcry is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party).

The grounds on which the claim is based are as follows:

“He has installed a camera which is recording my family, affecting my intimacy.
personal life (...)”—folio nº 1--.

Together with the claim, it provides a photograph that allows the observation of
a device in the window area visible from the outside (Annex I).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), said claim was transferred to the claimed party in fe-
cha 11/08/21 and 12/16/21, to proceed to its analysis and inform this Agency
within a month, of the actions carried out to adapt to the requirements
provided for in the data protection regulations.

No response has been received to this transfer letter, nor has any clarification been provided.
produced in legal form.

THIRD: On January 17, 2022, in accordance with article 65 of the
LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On March 21, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the claimed party,

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter te, LPACAP), for the alleged infringement of Article 5.1.c) of the RGD, typified in the Article 83.5 of the RGD.

FIFTH: When the database of this Agency was consulted, it was communicated by official publication in the BOE dated 04/18/22.

SIXTH: On 05/23/22, a resolution proposal is issued in which, based on the ample evidence verified, it is considered correct to propose a sanction encrypted in the amount of €300, for the infringement of article 5.1 c) RGD, by having a bad camera oriented affecting the right of third parties without just cause.

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2/5

SEVENTH: On 06/12/22 a letter is received from the respondent stating that you have not been notified of the Start Agreement due to not correctly recording the data established by the claimant in her claim before this Agency, associated with her person, as well as the non-operative character of the installed camera that fulfills a deterrent function due to acts of vandalism by the claimant herself, having proceeded to removal of the same from its current location.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

First. The facts bring cause of the claim dated 05/11/21 through the which translates as the main fact the following:

“He has installed a camera which is recording my family, affecting my intimacy.

personal life (...)”—folio nº 1--.

Second. It is accredited as the main responsible B.B.B., with NIF ***NIF.1.

Third. There is evidence of the presence of a video-surveillance device that is incorrectly oriented towards the outside of the public thoroughfare, although it is not operational, fulfilling a deterrent function. Documentary evidence is provided that accredits such character (Annex I).

Fourth. There is no evidence of the presence of an informative poster indicating that it is a video-monitored area.

Fifth: There is no accredited treatment of the claimant's data, nor affectation of the right of third parties.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each authority control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: “The formal procedures regulated by the Spanish Agency for Data Protection will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulatory provisions dictated in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.”

II

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In the present case, the claim dated 11/05/21 is examined by me-

gave from which the following is transferred as the main fact:

“He has installed a camera which is recording my family, affecting my intimacy.

personal life (...)”—folio nº 1--.

The art. 5.1 c) RGD provides the following: The personal data will be:

“adequate, relevant and limited to what is necessary in relation to the purposes

for which they are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed

fulfilled comply with current legislation, proving that it complies with all

the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative sign.

ive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each

personal character.

In any case, the cameras must be oriented towards the particular space, avoiding

intimidate neighboring neighbors with this type of device, as well as control areas

transit of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either.

co, as this is the exclusive competence of the State Security Forces and Bodies

ted.

It should be remembered that even in the case of a "simulated" camera, the same

should preferably be oriented towards private space, since it is considered

that this type of device can affect the privacy of third parties, that they are inti-

measured by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space, outside the cases allowed in the regulations.

III

In accordance with the initial evidence available in this report, sanctioning procedure, it was considered that the claimed party has a system of video-surveillance cameras that is affecting the privacy of the neighbor (a) adjoining without just cause.

The evidence provided made it possible to verify the presence of a wrong device. oriented visible from the public sidewalk and that can affect the control of entrances/exits.

Notwithstanding the foregoing, the respondent in writing dated 06/12/22 states uncivic conduct of the claimant denounced before the Forces and Bodies of State Security, arguing that the camera is not operational, fulfilling a purely deterrent function.

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4/5

So that with the reported device it is not taking place processing of any data, although it is advisable to limit the impact of the same orienting it preferably towards private space, meanwhile redirecting the parts its conduct to the strict principles of good neighborliness.

Their presence must be assessed based on the circumstances of the specific case, sometimes being a necessary measure to avoid certain types of

"behavior" resulting from a bad neighborhood relationship, fulfilling a modulator of the same and accrediting its effectiveness to avoid major evils or dissuade them from continuing to do so.

The condemnation of this body to certain types of incivil acts or vandals, whatever their nature, who, protected by a certain poaching, intend to avoid any type of responsibility to the author of the same.

Furthermore, there has been the withdrawal of the same from its current place of location, according to the declaration of the principal responsible considering the conduct as negligent to fulfill a dissuasive function against certain uncivic behaviors that he exposes has suffered by the complaining party, putting himself available to this body if deemed necessary.

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.

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5/5

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).

v

In accordance with the foregoing, the “responsible” declaration of the claimed stating the inoperability of the device in question, fulfilling a dissuasive function against alleged acts of vandalism by the claimant, reason which is considered sufficient as there is no data processing to order the File of this procedure, being able to dispose of the device in question if considers it opportune although with the exposed recommendations.

The parties are reminded that this Agency should not be instrumentalized in issues outside its competence framework, owing the rest of its own issues

of the bad neighborhood relationship in your case be subject to transfer to the judicial instances

relevant, where they can expose the issues they deem necessary.

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the ARCHIVE of these proceedings as they are not accredited

committed the commission of any administrative infraction with the device that is the object of the claim.

mation.

SECOND: NOTIFY this resolution to Don B.B.B..

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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

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