

□ Procedure No.: PS/00202/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Ms. A.A.A. (*hereinafter, the claimant) dated January 16, 2020

filed a claim with the Spanish Data Protection Agency. The

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

reasons on which the claim is based are "installation of a camera towards my
private property" (folio nº 1).

Along with the claim, provide documentary evidence that proves the presence of the
device(s) (Proof No. 1).

SECOND. On 03/03/20, a response was received from the defendant stating
succinctly the following:

"On 02/03/20, Preliminary Proceedings were issued by the Court of

Instruction nº 10 (***LOCALIDAD.1) with procedure number

***PROCEDURE.1, informing you of a Complaint filed against it

for an alleged crime against privacy, which is being investigated in

said Court and investigated in the Civil Guard Command

(***LOCATION.1).

For all these reasons, I REQUEST: That the suspension of the procedure of

reference until the criminal jurisdictional matter is resolved, except for accreditation of the
timely court order".

THIRD: On 06/25/20 a new letter is received from the COMPLAINANT for

means of which states the following:

“As can be deduced from the literal tenor of said Report, it is proven that there are

in the house of the accused four monitors where the terrace of the

housing in this part, the two upper windows on the second floor and the façade

top of the side of the house. A copy of said Report is provided in this document.

For this reason, REQUESTS: That it be considered as attached to the file that already exists in

this body (...).”

FOURTH: On 06/26/20, a written statement is received from the accused party

stating the following:

- It has a video-surveillance sign.

- Responsible for the Doña B.B.B. file.

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- The term of conservation of the photographs is approximately 26 days.

Various photographs are attached that prove what in your case is captured with

the cameras in question (Photos 0-11).

FIFTH: On October 26, 2020, the Director of the Spanish Agency for

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

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

GDPR.

SIXTH. On 11/13/20 a new brief of allegations was received from the party

denounced consisting of a Report issued by the company SERPROSEG for

means of which states the following:

- Printing of the camera screens with date and time (D1, D2, D3 and D4).

- Photograph of the main access door with a video-surveillance area sign (A2).
- Poster of video-monitored area (A3).
- Photograph taken from Google Earth with situation.
- Features and specifications of the cameras.
- Contract of ET Seritec Sistemas Informático S.L (as installation company).

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 01/16/20, this Agency received a claim from the complainant

transferring as main fact "installation of a camera to my property particular" (folio nº 1).

Second. It is accredited as the main person responsible for the installation of a Doña B.B.B. video-surveillance camera system.

Third. The system has a video-surveillance sign indicating the person responsible for the processing of personal data.

The entrance door has an informative poster for legal purposes appropriate (Proof Doc. A1-A2).

Fourth. The installed system is for security reasons of the property and its residents, being provided with four cameras, which focus on the area exclusive to the defendant.

Fifth. There is no image of the private property of the complainant, nor even less of the pool area of it.

Sixth. The entity provides a Certificate dated 11/27/19 of compliance with the RGPD and the LOPDGDD, stating that they have implemented the necessary measures adequate technical and organizational data protection matters.

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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

In the present case, the claim dated 01/16/20 is examined by medio from which the installation of a video camera is transferred as the main fact surveillance presumably oriented towards his private property, thereby affecting their personal and/or family privacy without just cause, as stated in the complaint.

The art. 5.1 c) RGPD 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 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, 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 intimidated 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.

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The camera can fulfill a dissuasive function for housing protection, while making sure not to obtain images from public/private third-party space without justified cause.

III

The accused party does not question the installation of a vision system deo-surveillance for security reasons of your private property.

Article 22 section of the LOPDGDD provides:

“Physical or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of to preserve the safety of people and property, as well as its installations.

nes”.

In the investigation phase, the evidence provided is analyzed (photographs more with date and time D1, D2, D3 and D4), without affecting the primary space.

complainant, the images corresponding to the exclusive area of the complaint ciada

It should be pointed out that the mere observation of the installed cameras does not affects the personal data of the complainant, given that sometimes

These types of systems have a privacy mask that allows you to control what in your case it is captured.

The denouncing party has total freedom when installing the cameras and decide the number of them, as long as they are limited to their space. private space or the necessary space so that they can fulfill their purpose (vgr. orientation towards a dividing wall to avoid access to the house).

The only evidence provided by the denouncing party consisting of an Act of Civil Guard inspection dated 02/21/20, does not invalidate the presumption of innocence evidence of the accused, since the only thing that accredits the documentary evidence provided is the presence of the installed cameras, although they do not have access to the display monitor. tion of the images.

The main camera in conflict between the parties, is installed on a wall from the chalet of the defendant, there being a considerable distance to the chalet of the defendant, advertiser, as well as a separation wall between both properties.

As has been indicated, from a high area the presence of camera, but this does not imply the recording of the private property of the de-announced and even less of the area where the swimming pool is located, as there is a separation wall between the houses.

Therefore, no objective evidence is provided, which proves the capture

of private space of the accused, not even accidentally and/or fortuitously.

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Furthermore, the full collaboration with all the requirements stands out.

instructions of this Agency, which excludes any intention to violate the regulations in force by the accused party.

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).

v

In accordance with the foregoing and once the evidence provided has been analyzed, it is conclude that there is no administrative infraction in the matter of protection of data, reason why it is appropriate to order the File of this procedure.

Finally, the parties are reminded of the importance of the rights at stake.

go, and must avoid the instrumentalization of the various agencies in matters far from the framework of data protection, being advisable to redirect the re-relation to the minimum requirements of good neighborliness.

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the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no

accredited the commission of any administrative infraction in the matter of protection

of data.

SECOND: NOTIFY this resolution to Doña B.B.B. and REPORT the

result of the actions to the complainant Doña A.A.A.

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

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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