

□ Procedure No.: PS/00175/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Don A.A.A. (hereinafter, the claimant) dated January 27, 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 the presence of a camera in the window of the

denounced that captures a large public space without just cause, specifically a

public square, which is located in the Riaño industrial estate (Langredo-Asturias).

Along with the claim, provide documentary evidence (Doc.1-3) that proves the

presence of a device in the window with presumed orientation towards space

public.

SECOND: On 03/05/20, the claim is TRANSFERRED to the party

denounced, so that it may express what it deems appropriate in relation to the facts

object of complaint.

THIRD: On 06/05/20, a written statement was received from the accused by

which means the following:

“The camera to which they refer has been put in the year 2017, because that is how I

indicated the National Police (Langredo) after spending two years, since 2015, suffering

damage to vehicles in my home”

"I also inform you that the only recordings that exist of said

cameras are in the Court of Langredo, with their corresponding complaints and

Lawsuits in progress”.

FOURTH. On September 1, 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 10/15/20, a written statement was received from the accused stating the following:

-I communicate various parts of the insurer Allianz Seguros for damages in vehicle owned by me.

-I take this opportunity to indicate that the camera in question has already been withdrawn.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

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FACTS

First. The object of this procedure is the claim dated 01/27/20 by means of which the following is transferred as the main fact:

“presence of a camera in the window of the accused that captures a wide public space without just cause, specifically a public square, which is located in the Riaño polygon (Langredo-Asturias)”.

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

He denies the facts, although he justifies them by repeated damage to his private vehicle. I know provides as documentary evidence:

- *** ATTESTED.1.

- *** ATTESTED.2.

- *** ATTESTED.3.

- *** ATTESTED.4.

Third. It is proven that the defendant has proceeded to remove the camera from her current site location.

Fourth. Document provided by Criminal Court No. 1 PA 0000203/2019 (La-Gredo) where it is identified as Defendant Mr. A.A.A., current complainant in this Spanish Data Protection Agency.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority control, 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 01/27/20 is examined by me-gave from which he translates the following:

"installation of camera oriented towards public space" without justified house

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").

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It should be remembered that individuals are responsible for ensuring that the systems installed
felled comply with current legislation, proving that they comply with all
two the requirements demanded by the regulations in force.

Article 22 section 2 of the LOPDGDD provides:

“Images of public roads may only be captured to the extent that it is
essential for the purpose mentioned in the previous section.

The cameras must be oriented towards the particular property, not being able to
affect the rights of third parties who may feel intimidated by this type of disposition.
sites.

Security cameras installed in private spaces will not be able to obtain images
public spaces, the security function of public spaces corresponding to
It is exclusively for the State Security Forces and Bodies.

Therefore, capturing images of public spaces by security cameras
private or private surveillance, must be limited to what is strictly necessary, applied
do in any case the principle of proportionality.

III

In accordance with the allegations and evidence available in the pre-
present sanctioning procedure, it is considered that the defendant has a
video-surveillance camera in the window of his home facing public space
co.

The party denounced brings various complaints before the Forces and Bodies of
State Security, which confirms various damages to the vehicle they own (Ci-
troen C4) subsumable in a crime of property damage (art. 263 CP).

This organization has spoken widely about the rejection of vanguard acts
damage to private property that are carried out furtively, under cover of the
belief that they will not be the object of any reproach, sometimes allowing the installation

transitory recording of a hidden camera, which allows the person responsible for the same to be accredited.

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Remember that this type of action can be supported by the Forces and

Security Bodies of the locality, having to make available to them the

images obtained or, where appropriate, from the Investigating Judge closest to the place of the

facts.

Sometimes the installation of this type of device fulfills a different function.

persuasive against property damage that occurs surreptitiously, allowing

I intend to obtain material evidence from the alleged author of the same, who enjoys a

great facility to perform the acts described.

Although the facts could be considered as constituting a

administrative infraction, for violation of the content of article 5.1 c) RGPD, the

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measure may be considered proportionate in the circumstances

exposed case, since its purpose was none other than to protect his private vehicle.

lar against the damages committed.

The impact on the rights of third parties has not been proven, as it is oriented

exclusively to the vehicle that is the object of various attacks, being

the local State Security Forces and Bodies aware of the facts

described.

Furthermore, the evidence has been submitted to the Criminal Court

nº1 (Langreo) where the case is being resolved within the framework of PA 0000203/2019, without

that there is a definitive pronouncement on the merits of the matter.

The proliferation of possession and use of video-recording devices by citizens, facilitated in recent years by the cheapening and small size of these devices, and even with the possibility of photographic cameras and even mobile phones that allow video-recording, has given rise to numerous assumptions cases in which individuals, harmed or aggrieved by acts of a criminal nature, or mere witnesses of such events, have video-recorded such events.

There would be no difficulty in admitting video recording as evidence made by the private individual on public roads because, ultimately, the video-recording by the particular does not cease to be the documentary record (video-documentary) of what a individual witnessed, being a witness-victim or a witness of the facts, in this case a witness endowed with an extra guarantee regarding the credibility of his "testimony" since what he witnessed was captured in a videographic documentary support, with what your statement (in the instruction as an investigative diligence or in the act of the oral trial, it would have to confirm that the images provided in these phases were proceedings, the ones he recorded) and this document constitute a set of evidence of effectiveness but which, in terms of its legal regime, does not differ from testimonial evidence. more cal, and in terms of its assessment by the Judge or Court, it will be a diligence of construction or proof that will have to be valued like the others.

The normal course of videographic evidence, once lawfully obtained and correctly contributed to the process, will be the proposal of its viewing by any of the parties, as documentary evidence, in the sessions of the oral trial, so that the Or-Jurisdictional court can directly perceive the images of which they consist.

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So that an individual can occasionally obtain images of the public thoroughfare that prove a criminal act, having the same character of

essential documentary evidence when filing a COMPLAINT at a Police Station or

Trial court.

IV

In accordance with the foregoing, it is considered that there is an open legal case in which

The images have been provided as evidence of an alleged criminal act.

obtained, having proceeded in any case to the removal of the camera in question in

Thus the main question is settled.

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According to the above, the measure is considered proportionate to the end

guided, the total absence of intentionality in affecting the data of third parties is valued.

us, as well as the collaboration with this organization, reasons all of them that justify the

File of this procedure.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria

tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this administrative procedure.

SECOND: NOTIFY this resolution to Doña 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 of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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