

□ Procedure No.: PS/00470/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On August 24, 2020, it had entry in this Spanish Agency of Data Protection a document presented by A.A.A. (hereinafter the claimant), through which he makes a claim against B.B.B. with NIF ***NIF.1 (in hereinafter, the claimed), for the installation of a video surveillance system installed at ***ADDRESS.1, with indications of a possible breach of the provisions in the personal data protection regulations.

The reasons underlying the claimant's claim are that the neighbor has installed two video cameras that record his home and his family, as well as the way public.

Attach photographic report of the location of the cameras.

SECOND: Prior to the acceptance of this claim for processing, it is transferred the claimed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), delivering the notification on 30 September 2020.

No response has been received from the respondent.

THIRD: On January 25, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the GDPR.

FOURTH: On February 9, 2021, allegations to the initiation agreement formulated by the respondent in which it shows that the installed camera does not record continuously, that records within your property, and that it only captures a small part of the door.

He provides several photographs, one of which shows a vehicle parked inside of your property.

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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2/4

FACTS

FIRST: Installation of a camera that collects images of people who located inside the private space of the property located at ***ADDRESS.1.

SECOND: The person responsible for the devices is B.B.B. with NIF ***NIF.1.

THIRD: The respondent declares in the pleadings brief to the initial agreement that the camera only collects images of people inside of the private space of the property, and a minimal part of the door.

He has provided photographs in which it is seen that the interior area of the property is captured.

FOUNDATIONS OF LAW

Yo

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 LOPDGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this

process.

II

The defendant is charged with the commission of an infraction for violation of article 5.1.c) of the RGPD, which states that personal data will be “adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (“data minimization”)”.

This infringement is typified in article 83.5 of the RGPD, which considers as such:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

- a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;
- b) the rights of the interested parties according to articles 12 to 22; [...].”

III

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD, in its art. 58.2 b) establishes the possibility of sanctioning with a warning, in relation to what stated in Recital 148:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however

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Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance."

IV

In the present case, it is appropriate to analyze the presumed illegality of the installation of a video surveillance camera placed in the building located at ***ADDRESS.1.

The proven facts show the existence of a camera installed in the in front of the property which, according to the allegations of the defendant in her response to the agreement to initiate this procedure, does not capture the public road, only collects images of people who are inside the space private property, and minimally engrave the door, since it is unavoidable.

v

The principle of the right to the presumption of innocence, recognized as a right fundamental subjective in article 24 of the Spanish Constitution, prevents imposing an administrative sanction when proof of accrediting charge of the facts that motivate the imputation or of the intervention in the themselves of the alleged offender and 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 in the most favorable way for the interested party.

The aforementioned right to the presumption of innocence is also included in a expressed in article 53.2.b) of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (hereinafter, LPACAP), which

establishes that:

"two. In addition to the rights provided for in the previous section, in the case of administrative procedures of a punitive nature, the alleged responsible will have the following rights:

[...]b) To the presumption of non-existence of administrative responsibility while the contrary is proven."

In relation to this principle, the Constitutional Court in its Judgment 76/1990, of 26 of April, 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 the reproached conduct; that the burden of proof corresponds to the person who accuses, without no one is obliged to prove their own innocence; and that any insufficiency in the result of the tests carried out, freely valued by the sanctioning body, must be translated into an acquittal pronouncement."

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4/4

SAW

Based on the foregoing, it cannot be concluded that the devices subject to the claim capture images beyond a minimum space outside your property particular, so that it is not possible to speak of infringing conduct in the field of framework of the data protection regulations, which is why it is proceeds to the Archive of this procedure.

Therefore, in accordance with the applicable legislation, the Director of the Agency

Spanish Data Protection RESOLVES:

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

accredited administrative infraction.

SECOND: NOTIFY this resolution to 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

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

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