

□ Procedure No.: PS/00294/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On February 18, 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 in
***ADDRESS.1 of

***LOCATION.1, there are indications of a possible

Non-compliance with the provisions of the data protection regulations
staff.

The reasons that support the claim and, where appropriate, the documents provided
by the claimant are as follows:

«[...] FIRST: That the defendant has installed several video surveillance cameras in

***ADDRESS.1 of ***LOCATION.1, from which images of the
land owned by me, as presumably deduced from the possible field of
vision. [...].”

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
03/12/2020.

The aforementioned transfer was reiterated on 06/22/2020, received on 07/07/2020.

No response has been received from the respondent.

THIRD: On December 3, 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.

FOURTH: On February 16, 2021, allegations are received at this Agency to the initiation agreement formulated by the respondent in which it is clear that the video surveillance system was contracted with PROSEGUR ALARMAS, and that, once received the Agreement to Start the Sanctioning Procedure sent by this Agency, contacted the installation company which, after a visit to the warehouse, confirmed that "(...) in no way are images being captured of land belonging to

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third parties, as evidenced by the contribution, together with this written copy of the images obtained by the company's technician "PROSECUR ALARMS" in the aforementioned visit. (...)"

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: Installation of two cameras that only collects images of space of the farm located at ***ADDRESS.1 of ***LOCATION.1, and a minimum space outside of your private property.

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 cameras collect images of the farm.

The defendant has provided a photographic report of the captures of the cameras.

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 LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

The defendant is imputed 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; [...].”

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III

In the present case, it is appropriate to analyze the alleged illegality of the installation of a video surveillance system consisting of two cameras placed in the building located at ***ADDRESS.1 of ***LOCATION.1 and a minimum space outside your property particular.

The proven facts show the existence of two cameras installed in the facade of the property that, according to the allegations of the defendant in his response to the agreement to initiate this procedure, they do not capture the public thoroughfare, only collects images of the private space of the farm and a minimum space outside your private property.

IV

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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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

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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. with NIF ***NIF.1.

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

938-131120

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