

□ File No.: PS/00225/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: Dated February 1, 2021, had entry in this Spanish Agency  
of Data Protection a document presented by A.A.A. (hereinafter, the claimant)  
te), through which he makes a claim against B.B.B. with NIF \*\*\*NIF.1 (hereinafter,  
the claimed), for the installation of a video surveillance system installed in \*\*\*DI-  
RECTION.1, there being indications of a possible breach of the provisions of the  
personal data protection regulations.

The reasons that support the claim is that the claimed party has installed  
two video surveillance cameras on your plot:

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The first of the cameras, together with a solar panel, is installed in the upper part  
top of a post located on a container located on the claim parcel.  
mado. This camera has the appearance of being able to record in 360 degrees, and it is  
located at an approximate height greater than four meters from the ground  
from the road that the plot faces.

That the plot is located on a higher plane than the single-family dwellings  
relatives located across the road, heading west or to the  
sea, so that considering the height at which the aforementioned camera is  
of the indicated dwellings, it can visualize or record the interior of  
the aforementioned parcels.

Also, this camera is at a height that also allows you to view the

interior of the parcel owned by the claimant and in which there is also a single family Home.

-

The second of the cameras focuses directly from the plot of the claimant- do to the south, to the plot that is owned by the applicant and in which there is a construction intended for garage and storage.

In addition, it points out the absence of an information poster for the installation of the viewing system. deosurveillance

Provide photographic report and notarial act.

SECOND: Prior to the acceptance of this claim for processing, it is transferred claimed, in accordance with the provisions of article 65.4 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of the rights digital data (hereinafter, LOPDGDD), being notified on March 10 of 2021.

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2/8

There is no record in this Agency of any response from the respondent.

THIRD: The claim was admitted for processing by resolution of May 11 of 2021.

FOURTH: On July 9, 2021, the Director of the Spanish Agency for Pro- Data Protection agreed to initiate a sanctioning procedure against the defendant, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, on the Procedure Common Administrative Procedure of Public Administrations (hereinafter, LPA-

CAP), for the alleged infringement of articles 5.1.c) and 13 of the RGPD, typified in the article 83.5 of the RGPD.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, he stated that at the end of March or the beginning of April tried to send this Agency a letter, but had problems with the connection to the network and thought it had been sent successfully.

He points out that in that letter he indicated that he had a camera that was a deterrent, that he did not recorded, it was not even connected to the light. That the complaint is made by your neighbor te, with whom he is in criminal litigation, and who provided evidence that the camera was on your property.

SIXTH: On September 28, 2021, the instructor of the procedure agreed the opening of a period of practice of tests, considering incorporated the previous investigation actions, E/02045/2021.

SEVENTH: On 10/25/21, an extensive written statement of allegations was received from the claimed explaining the issue in detail, stating in essence that "it is not responsible for any installation" as he has not lived in the locality for a long time.

He provides ample documentary evidence in support of his statements, although

At the same time, he considers that his complaints about the installation have not been addressed. also of cameras oriented towards their land.

- Complaint to the Court (Annex and Written No. 16).

-Copy of the simulated camera invoice that you installed at the time (Annex I).

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

## PROVEN FACTS

FIRST: Existence of two video surveillance cameras installed in \*\*\*DIRECT-TION.1,

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The first of the cameras, together with a solar panel, is installed in the upper part

top of a post located on a container located on the claim parcel.

mado. This camera has the appearance of being able to record in 360 degrees, and it is

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3/8

located at an approximate height greater than four meters from the ground

from the road that the plot faces.

That the plot is located on a higher plane than the single-family dwellings

relatives located across the road, heading west or to the

sea, so that considering the height at which the aforementioned camera is

of the indicated dwellings, it can visualize or record the interior of

the aforementioned parcels.

Also, this camera is at a height that also allows you to view the

interior of the parcel owned by the claimant and in which there is also a

single family Home.

-

The second of the cameras focuses directly from the plot of the claimant-

do to the south, to the plot that is owned by the applicant and in which there is

a construction intended for garage and storage.

In addition, the existence of an information poster for the installation of the system is not observed.

of video surveillance.

It is accredited by photographic report and notarial act.

SECOND: It has not been possible to prove the authorship of the installation of the cameras, beyond their temporary presence at the time indicated by the claiming party.

THIRD. The defendant states that "he does not have any camera installed" although in a previous moment it had a dissuasive camera to avoid the continuous damage on land owned by you.

FOURTH: No frame has been provided containing the data of the claim.

lover and/or their relatives obtained through the installed cameras or capturing their private space.

## FOUNDATIONS OF LAW

Yo

The Director of the Spanish Agency is competent to resolve this procedure.

of Data Protection, in accordance with the provisions of article 58.2 of the RGPD

and in articles 47 and 48.1 of the LOPDGDD.

II

In the present case, it is appropriate to examine the claim filed with this Agency,

which the claimed party is responsible, in which the installation of a system is indicated.

video surveillance theme installed in \*\*\* ADDRESS.1, which due to its positioning and

characteristics seems to be covering a part of the public thoroughfare, and several dwellings

located on the other side of the road, as well as the absence of an information sign for the area

video surveillance.

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Article 5.1.c) of the RGPD provides that personal data will be “adequate two, 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 felled 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. tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each personal character.

Article 22.4 of the LOPDGDD provides that:

“The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights provided for in the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code or internet address to this information”.

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.

Nor can images of public spaces be obtained with this type of device, as this is the exclusive competence of the State Security Forces and Bodies.

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

On the part of individuals, it is not possible to install imaging devices

of public space, outside the cases allowed in the regulations.

Article 13, sections 1 and 2, of the RGD, establishes the information that must be provided to the interested party at the time of collecting their data. In the case of treatments of personal data for surveillance purposes through camera systems or video-cameras, the duty of information can be fulfilled by placing, in the areas video-surveillance, of an informative badge located in a sufficiently visible place, both in open and closed spaces, and using forms in which

The information provided is detailed, which the person in charge must make available to the interested.

These infractions are typified in article 83.5 of the RGD:

"Infringements of the following provisions shall be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or,

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5/8

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;

a)

the rights of the interested parties under articles 12 to 22; [...]."

For the purposes of the limitation period for infringements, they are considered very

serious and prescribe after three years, in accordance with article 72.1 of the LOPDGDD, which is establishes that:

"According to the provisions of article 83.5 of Regulation (EU) 2016/679

are considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data violating the principles and guarantees established established in article 5 of Regulation (EU) 2016/679.

(...)

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law. (...)"

III

In the present case, the claim dated 02/01/21 is examined by me-

from which the presence of a video-surveillance system is transferred, which according to

claimant's demonstration "they record with a wide spectrum the public thoroughfare and the interior of numerous enclosed plots with walls and single-family homes located in the immediate mediations" (folio nº 1).

In support of his claim, the claimant provides documentary evidence (Act No.

Annex I) who, having traveled to the scene of the events, verified the presence of a mara "perched on top of a pole next to a solar panel" that "has the appearance of be able to record.

"That the second of the cameras focuses directly from the catastrophic plot

tral 3725\*\*\*32X towards the South, to the cadastral parcel 372531\*\*\*001XX, which is owned of the applicant and in which there is a construction for a garage and storage

I lie"



Transferred the facts object of claim, the claimed party denies being the responsible for the installation, there being various conflicts of a civil nature between the same.

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6/8

In support of his claim, he provides documentary evidence dated 10/25/21 that corroborates what he stated, in such a way that he has not installed a device any and denies being responsible for any type of device for some time who does not reside in the locality.

It also provides (Doc. No. 16 and 18) documents that prove the complaint of harmful acts against the property of the same, where the counterpart intervenes.

Examined the allegations of both parties, it is possible to infer the bad relationship between them due to an issue of "boundaries" between the plots of both parties, true genesis of the problem between these, which must be settled in the timely court proceedings.

Regarding the subject of the cameras, it has not been possible to prove that with any of the they "process data of an identified and/or identifiable natural person", not being

The installation of dissuasive devices is prohibited, although it is recommended that they are, where appropriate, directed towards their own private areas.

It is recalled that any type of illegal action may be subject to recording.

tion by means of devices of this nature, having to send the images to the Security Forces and Bodies of the locality or to the Court of Instruction more close to the scene of the events.

The crime of damage is regulated in articles 263 to 267 of the Penal Code. This crime is  
occurs when the active subject causes the destruction or impairment of a property  
someone else's dad

“Whoever causes damage to property belonging to others not included in other titles of  
this Code, will be punished with a fine of six to twenty-four months, attending the con-  
economic condition of the victim and the amount of the damage” (art. 263 CP)

So it is recalled that any illicit action in the matter that  
can be captured with a camera, even "hidden" can be provided in  
courthouse, to prove damages to property belonging to others or on unincorporated land.  
even in judicial dispute, as long as there is no firm pronouncement on the matter.

Furthermore, the set of evidence provided does not allow us to prove  
that an area reserved for the privacy of the claimant and/or his group is being affected  
closest family member, as they are installed in an open area, somewhat isolated.  
linked and shared by proximity between the parties in conflict, but at a certain distance.

Inc.

In accordance with the above, it goes without saying that if the cameras are “not  
operations” it is not necessary that they are equipped with an informative poster(s), since they do not  
it is necessary to inform about it, although in case of activating them, remember the obligatory  
Be sure to place it in a sufficiently visible area.

IV

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7/8

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. 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).

The allegations of the accused party are considered sufficient to

prove at this time his innocence on the subject of the cameras whose ownership is unknown to the respondent, as the farm is not supplied with electricity which makes any operation of these even more difficult if possible.

v

In accordance with the foregoing, having examined the allegations and evidence provided, no been able to verify any administrative infraction in the matter that concerns us, reason by which it is appropriate to order the Archive of this procedure.

The parties are reminded of the importance of the rights at stake, not being able to instrumentalize this Agency for matters of a civil nature, which must be resolved in the appropriate judicial instances or transferred to the Forces and Corps post of Security of the locality, having to adjust their behavior to the minimum good neighbor rules (SAN 04/01/2011, resource 2223/2010).

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria tion of the sanctions whose existence has been proven,

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8/8

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no evidence gives the commission of any administrative infraction in the matter that concerns us.

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

Director of the Spanish Data Protection Agency

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