

□ Procedure No.: PS/00358/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Mrs. A.A.A. and Mrs. B.B.B. (hereinafter, the claimants) dated 27
December 2019 they filed a claim(s) with the Spanish Agency for
Data Protection. The claim is directed against the resident of the town C.C.C.
with NIF ***NIF.1 (hereinafter, the claimed one). The grounds on which the claim is based
they are installation of a web cam in the window of the defendant's home,
oriented towards the transit area of the neighbors, without just cause.

Along with the claim, provide documentary evidence (Doc. No. 1) that proves the
presence of the web-cam device in the window of the dwelling facing
public space.

SECOND. On 02/04/20, the events were TRANSFERRED to the
denounced, which states before this body that "it does not have cameras of
video-surveillance in his home", although he does not deny that it had installed
the aforementioned web cam that appears according to documentary evidence in the window of his
property.

THIRD. On 10/09/20, the decision was made to admit the claim to the
appropriate legal effects.

FOURTH. 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.

FIFTH. On 01/25/21, a written statement was received from the respondent

arguing the following:

"I do not deny that there was a web cam on the shelf of my house but oriented towards the sky and being turned off by the constant annoyances caused by the claimant's pet and said web cam was put on to see if it would stop bothering with the same (...)

To demonstrate all these violations, the web cam was placed on the shelf of my window to demonstrate the commission of crimes reported by C.C.C. and that I never know made no recording

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

First. On 2/27/19 a claim is received transferring as the main event the presence of device (web-cam) oriented towards public space, without cause justified.

Second. The data provided allows us to verify that the main responsible party is the neighbor of the town Don C.C.C..

Third. It is proven that he has a web-cam connected to the main computer, which directs at will towards public and/or private space third parties without just cause.

Fourth. The defendant states that he did not record any image with the camera in

issue that put it punctually to intimidate her neighbor due to the inconvenience that causes the pet of the same.

Fifth. It was not possible to verify that the device in question obtained images (personal data) associated with the claimants, nor that they have been used in some.

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 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 resolve this procedure.

II

In the present case, we proceed to examine the claim dated 12/27/19 by means of which the presence of a web-cam in the window of the accused pointed towards public space, without just cause.

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.

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The installation of this type of device must have the mandatory sign informative, indicating the purposes and responsible for the treatment in your case of the data of a personal nature.

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.

Also with this type of device it is not possible to obtain image(s) of space public, as this is the exclusive competence of the Security Forces and Bodies of the Condition.

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, which are seen 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.

III

In accordance with the evidence available in this sanctioning procedure, it is considered that the defendant has a web-cam that was oriented without just cause towards public space, affecting the right of third parties.

A web cam is a device that allows capturing images of third parties (personal data) which may be stored on a device computer, so the facts, transferred are considered, are constitutive of the described offense.

It should be noted that the respondent states that it "was not operational" that is, that it has not recorded any image, although it contradicts itself by stating

that he put it "to demonstrate all those infractions".

To date the camera (web cam) has been removed from the exterior window so that it has not been possible to verify that data has been processed with it associated with an identified or identifiable person.

However, the behavior described should be "reproached" as the device is described an effective instrument to affect the privacy of third parties, and may be intimidated with it in the belief of being recorded without just cause.

Nor can it be considered an *usus incommuni* in the field of relations of neighborhood, because its use is objectively disturbing privacy, without the need some.

The Judgment of the First Chamber of the Supreme Court of November 7, 2019 declares that the installation of a fake video surveillance camera, apparently

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identical to other fully operative ones, is likely to restrict the freedom of third parties.

In the same way, a web cam, as a camera with the possibility of recording a hard drive is a device with which you can intimidate third parties, affecting the matter that occupies you that is the "treatment of your data" without just cause and of disproportionate way.

IV

The principle of presumption of innocence prevents imputing an administrative offense when proof of charge accrediting the

facts that motivate the imputation or of the intervention in the same of the presumed offender. 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 of 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 game of the test 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).

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According to the exposed facts it has not been possible to confirm that with the camera

(web cam) in question third-party data will be processed in an unjustified manner, reason for which it proceeds File this procedure.

The respondent is warned that he cannot install a camera in the window of his housing oriented towards public and/or private space of a third party without just cause,

This is not the ideal means to accredit the behaviors that it describes, being able to

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incurring both in a civil offense, even if it does not record, as well as in a criminal offense for Affection of privacy in case of repetition of the conduct.

The denouncing parties, in case of reiteration of the conduct, can transfer the made to the local Security Forces and Corps (vgr. local police) or take a photograph (s) with date and time that proves what has been stated, sending a new Complain to this body for the appropriate legal purposes.

Finally, emphasis is placed on reminding the parties of the transcendence of the rights at stake, having to settle their "personal" conflicts in the instances timely, and must avoid instrumentalizing this body in matters remote of data protection (vgr. SAN April 1, 2011, resource 2223/2010, in its Legal Basis IV).

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure since it is not proven that the transferred conduct breaches data protection regulations.

SECOND: NOTIFY this resolution to C.C.C. and REPORT the result

of the proceedings to the claimants Mrs. A.A.A. and Mrs. 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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