

Procedure No.: PS/00351/2018

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before Mr.

A.A.A., by virtue of a claim filed by G. DE LA GUARDIA CIVIL -

PUESTO P. DE OLEIROS (hereinafter, the claimant) on its own initiative and based on to the following:

### BACKGROUND

FIRST: The claim filed by the claimant has an entry dated 18

May 2018 at the Spanish Data Protection Agency.

The claim is directed against A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the reclaimed). The reasons on which the claim is based are that after appearing at the farm owned by the defendant, the presence of "a video camera-surveillance on top of a pole, about five meters high" with alleged orientation towards public space without just cause.

Along with the written complaint, documentary evidence is provided (Doc. numbers 1 and 2) that prove the presence of the camera on top of a post, with presumed orientation towards public space.

SECOND: In view of the known data, the Subdirectorate General for Inspection of Data proceeded to carry out preliminary investigation actions for the clarification of the facts in question, in accordance with the power recognized in art. 58.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 regarding the protection of natural persons in what regarding the processing of personal data and the free circulation of these data and which repeals Directive 95/46/EC (General Data Protection Regulation) (hereinafter GDPR).

### THIRD

: On 06/28/2018 the claim was transferred to the person in charge identified by the Civil Guard, so that it could allege in Law what it deems timely in relation to the presumed irregularity of the installed system.

FOURTH: On 07/18/2018, a written statement of allegations is received electronically of the Lawyer Don B.B.B., although in the computer system there is no evidence provided any documentation.

On 08/08/18, a "correction" of the submitted brief was requested, requiring to the denounced party to provide additional documentation on the system installed, without any response being produced in a timely manner.

FIFTH: On 11/14/2018, the Director of the Spanish Agency for the Protection of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of article 5 of the RGPD, infringement typified in article 82.5 a) of the RGPD.

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SIXTH: On 11/22/18, this body received written allegations from the legal representative of the accused party stating the following:

“The request was answered in a timely manner. In this regard we must indicate that this statement is NOT correct because the prior requirement of information was presented in a timely manner.

Due to the above, I REQUEST that, having submitted this document with the attached documentation, please admit it, consider formulated the allegations that above (...) and by virtue thereof, proceed to the File of this procedure (...).”

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 05/18/18, this body received a COMPLAINT from the Guard

Civil by means of which it transfers as main fact:

that can be seen in one of the corners of the farm the installation of a

“

video-surveillance camera on a mast about five meters high” (folio nº 1).

SECOND: It is identified as the main person in charge of the installation Mr.

A.A.A.

THIRD: It is accredited in the computer system of this body the transfer

of the claim to the accused party on 06/28/2018.

FOURTH: It is accredited that a correction was requested by this body

to the respondent on 08/08/2018, when submitting the pleadings brief for

error or omission empty of content.

FIFTH: The installation of a video-surveillance system has been accredited,

composed of two chambers in the building located at \*\*\*ADDRESS.1.

SIXTH: It is accredited that the video-surveillance system has the mandatory

informative poster, indicating the person in charge to whom you can contact to exercise

the corresponding rights.

SEVENTH: It is proven that the reported camera only obtains images of the

interior of the farm, property of the accused party, having the

corresponding privacy mask that limits its vision.

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## FOUNDATIONS OF LAW

Yo

The Director of the Spanish Agency for the Protection of Data, in accordance with the provisions of section 2 of article 56 in relation to the section 1 f) of article 57, both of Regulation (EU) 2016/679 of the Parliament European and Council of April 27, 2016 on the protection of people regarding the processing of personal data and the free circulation of these data (hereinafter GDPR); and in article 47 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights digital (hereinafter LOPDGDD)

II

In the present case, we proceed to examine the Complaint forwarded by the Forces and State Security Corps (General Directorate of the Civil Guard-Company A Coruña) on 05/18/2018 by means of which it transfers as main event:

"that can be seen in one of the corners of the farm the installation of a video-surveillance camera on a mast about five meters high" (folio no. 1).

The facts are not denied by the accused party who in writing of allegations dated 11/22/2018 states that it has two cameras facing the inside your private home.

"The cameras installed are solid and, although the installation took advantage of the existing material on the property, they have telemetry disconnected, so such that it is no longer possible to ZOOM, nor is the zoom option enabled. movement (...)"

“The camera located in the back of the house (cam 2) is in a area of vegetation so it has been raised on a staff to achieve the effectiveness necessary (...)”

Along with your pleadings brief, you provide documentary evidence (photographs no. 4,5 6) that prove what was stated, being the images of the interior of their property private.

After analyzing the remaining allegations, the system has the mandatory poster information at the access door, as well as being registered in the General Registry of body for the appropriate legal purposes.

Article 4 section 3 of Instruction 1/2006 (AEPD) provides the following:

“Cameras and video cameras installed in private spaces may not obtain images of public spaces unless it is essential for the surveillance purpose that is intended, or it is impossible to avoid it by reason of the

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location of those. In any case, any data processing should be avoided.

unnecessary for the intended purpose.

So that individuals can install video-surveillance systems in your particular property, although it must be adapted to the requirements established in the current legal provisions.

Cameras installed by individuals cannot obtain images of public space, as this task is reserved for the Security Forces and Bodies, adopting the necessary measures so that the system focuses on the control

of your private property.

### III

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 punisher and must 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 contradictory procedure 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).

#### IV

According to what has been argued, after analyzing the evidence presented, it is conclude that the installed system complies with current legislation, not obtaining the same images of the public highway.

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The mere external visualization of the camera does not imply, as has been accredited, that it obtained images of the public space, having adopted the responsible for it the necessary measures to focus the objective on its private space, for security purposes of the property and its belongings.

Based on the above,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: PROCEED to decree the FILE of this procedure

administrative as the commission of any administrative infraction is not accredited.

SECOND: NOTIFY this resolution to Don A.A.A. and, according to art. 77.2

of the RGPD, proceed to INFORM the complaining party-GENERAL MANAGEMENT CIVIL GUARD (COMPANY OF A CORUÑA POSITION P. DE OLEIROS -) on the result of the claim.

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. 114.1 c) of

the LPACAP, 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

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