

Procedure No.: PS/00381/2018

RESOLUTION OF PUNISHMENT PROCEDURE

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

COMMUNITY OF OWNERS R.R.R., by virtue of a claim filed by

Don A.A.A. (hereinafter, the claimant) and based on the following:

BACKGROUND

FIRST: The claim filed by the claimant has an entry dated 6

August 2018 at the Spanish Data Protection Agency. The claim is

directs against COMMUNITY OF OWNERS R.R.R.

“The existence of video-surveillance cameras that focus on public roads (whose Justification is attached as documents No. 1 and 2”.

“For this reason, it requests: that prior to the checks deemed appropriate carry out, an agreement to initiate the sanctioning procedure is issued, in order to stop the action (...)”-folio nº 1--.

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 December 3, 2018, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article (s) 5 and 6, of the RGPD, considering that the system

denounced could be contrary to the general principles and treat data without having the consent of those affected, and may be subject to administrative sanction (Warning) in accordance with the provisions of article 58.2 RGPD.

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 08/06/2018, a written document is received in this body from the complainant by means of which the presence of video-surveillance cameras that focus on public roads and without a sign informative.

SECOND: On 12/03/18, the Agreement to Start the procedure with reference number PS/00381/2018, being the same notified

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in a timely manner to the accused party.

THIRD: The presence of at least one camera is accredited, installed in perpendicular to the facade of the property, without being able to determine the its operability.

FOURTH: The accused party has not made any statement in this regard in relation to the denounced device, stating in the system "Absent in distribution".

FIFTH: It has not been possible to determine if the camera denounced is of a dissuasive or if it is operational, by not making any statement the party

reported.

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 art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

II

The defendant is charged with the commission of an alleged infraction for violation of the Article 5 of the RGPD, which states that: "Personal data will be:

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

Likewise, article 6 RGPD "Legality of the treatment" includes the assumptions that are necessary to validate the processing of personal data of third parties.

Article 4 section 3 of Instruction 1/2006 (AEPD) provides: "The cameras and video cameras installed in private spaces will not be able to obtain images of public spaces unless it is essential for the purpose of surveillance that is intended, or is impossible to avoid because of the location of those. In any case, any unnecessary data processing should be avoided. for the intended purpose" (*bold belongs to this body).

Article 58 section 2 of Regulation (EU) 2016/679 OF THE PARLIAMENT

EUROPEAN AND OF THE COUNCIL of April 27, 2016, recognizes:

"Each supervisory authority shall have all of the following powers corrections listed below:

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b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions in this Regulation (...)"

III

In the case at hand, the facts do not admit discussion "presence of a camera of video-surveillance" with alleged orientation towards public roads without just cause.

As the only evidence to be assessed, the photograph(s) (Doc. nº 1 and 2) that

The complaining party provides where the installation of a camera is observed, with orientation perpendicular to the façade, directed towards an area where a gate (gate) closed.

It should be noted that the installation of (false) deterrent devices is not prohibited in our legal system, without the need to place a sign informative, given that the area in question is not being video-monitored.

From the evidence provided, control of the nearby sidewalk is not inferred, but rather that the itself seems to fulfill a dissuasive function, to avoid entering what

It looks like a building under construction.

The lack of response from the accused party, probably due to the fact that

In the case of a building under construction, it prevents entering into a more exhaustive analysis of the System characteristics.

To the foregoing add that no evidence has been provided that proves a "processing of personal data" of third parties without just cause, beyond mere assumptions or "suspicion".

The principle of presumption of innocence prevents the imputation of an infraction administrative when proof of charge has not been obtained and confirmed accrediting the facts that motivate the imputation or the intervention in the of the alleged 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 in the most favorable way for 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.

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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).

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Based on the foregoing, it can be concluded that it has not been possible to prove that the camera denounced is obtaining images of public space in a way disproportionate, not being corroborated either by the only evidence provided by the complaining party.

The above does not prevent in case of continuing the camera in its current location, that the complainant transfer the facts in his case to the Police Forces and Corps Security of the locality (vgr. Local police) which may, where appropriate, carry out the timely inquiries.

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: PROCEED to declare the FILE of this procedure by not be accredited any infraction within the framework of the current regulations on the subject of Data Protection.

SECOND: NOTIFY

this resolution to the COMMUNITY OF OWNERS R.R.R. and, according to art. 77.2 of the RGPD, as well as INFORMING the claimant on the outcome of the claim.

In accordance with the provisions of article 50 of the LOPDGDD, the

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.

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Director of the Spanish Data Protection Agency

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