

Procedure No.: PS/00083/2019

938-0319

## RESOLUTION OF PUNISHMENT PROCEDURE

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

A.A.A., pursuant to a claim filed by B.B.B. (\*hereinafter, the claimant) and

based on the following:

### FACTS

FIRST: On November 13, 2018, the claimant filed a claim

before the Spanish Agency for Data Protection, motivated by the alleged

data processing carried out through cameras of a video surveillance system

whose owner identifies as the aforementioned claimed installed in \*\*\*ADDRESS.1.

The reasons on which the claim is based are set out in the document sent

in the following terms:

“That the defendant has installed TWO video-surveillance cameras, one in the

eaves of his house, which records the public road and another in the hórreo, camouflaged with a

sack, from which the entrance to my house is also recorded (...)

That there is NO evidence that said video-surveillance is being attended by security guards

of security, contravening the provisions of article 42 of Law 5/2014, April 4,

of Private Security, as well as that the files are registered with the Agency

Spanish Data Protection”

“The treatment object of this Complaint is a reason for a SERIOUS infringement

of those provided for in letter c) of art. 44.3 LOPD because there is a

data processing in violation of the principles and guarantees established in the

Article 4 of the aforementioned Law (folio number 1).

Along with the claim, provide documentary evidence (photographs No. 1-3) that

prove the installation of two video-surveillance cameras with presumed orientation into public space without just cause.

SECOND: On 11/29/2018, the claim is TRANSFERRED

presented to the person in charge identified by the denouncing party, so that it can manifest itself on the facts in question, proving where appropriate that the system is conforms to the regulations in force, without any allegation having been made in the legally established deadlines.

THIRD: On February 25, 2019, 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 of the RGPD, infringement typified in Article 83.5 of the RGPD and qualified as Very Serious for the purposes of administrative prescription in the article 72.1 a) of the LOPDPGDD.

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FOURTH: On 03/15/19, this body received written allegations from the defendant, stating the following:

“Apologize for NOT having made allegations regarding the transfer previous.

The complaint is filed by Don B.B.B., who is an extremely conflictive neighbor, not only with me (...), for which he has been criminally and civilly convicted.

For this reason, we place cameras on our property, communicating it to the AEPD (doc. nº 2) and from that moment the damages suffered ceased to occur (...) for having sold him said plot, we understand that it is the cause of this Complaint.

The cameras were installed by a family member and do not record public space or any path. The cameras are located on my property and due to their approach DO NOT affect public land, roads, or third-party properties (only my property)...

We insist that the recordings obtained have veiled areas adjacent to the recorded area of my property, as I show in the provided frames where see areas in black, corresponding to public areas on which NO any recording.

On the other hand, I authorize the Data Protection Agency to request the intervention of the Civil Guard of Salas (Asturias) to carry out the verification timely that the installed cameras do not affect roads or public land, nor third-party properties.

#### PROVEN FACTS

FIRST: On 11/13/18 a claim is received from the complainant, for by means of which he transfers the following as the main "fact":

"That the defendant has installed TWO video-surveillance cameras, one in the eaves of his house, which records the public road and another in the hórreo, camouflaged with a sack, from which the entrance to my house is also recorded (...)—folio nº 1--.

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

A.A.A., a local resident, who has installed it for security reasons.

THIRD: That he proceeded to communicate the registration of the device to this Agency on the date 01/01/13 (evidence document No. 2).

FOURTH: There is no proof that the installed cameras obtain images of public and/or private space of third parties.

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

II

In the present case, we proceed to examine the claim of date of entry into this Agency 11/13/18 through which the main fact is transferred the

Next:

“That the defendant has installed TWO video-surveillance cameras, one in the eaves of his house, which records the public road and another in the hórreo, camouflaged with a sack, from which the entrance to my house is also recorded (...)

That there is NO evidence that said video-surveillance is being attended by security guards of security, contravening the provisions of article 42 of Law 5/2014, April 4, of Private Security, as well as that the files are registered with the Agency Spanish Data Protection”

“The treatment object of this Complaint is a reason for a SERIOUS infringement of those provided for in letter c) of art. 44.3 LOPD because there is a data processing in violation of the principles and guarantees established in the Article 4 of the aforementioned Law (folio number 1).

It should be noted that the installation of security cameras is not prohibited in our legal system, although the owner of the same is responsible for these conform to the legal system, being able to install them personally, without need to contract with a private security company.

They can be placed in a visible way or be hidden, if what is intended is to capture images of conduct contrary to law, although in

this last case cannot affect the private space of third parties (vgr. they cannot facing the neighbor's window without just cause).

It will suffice in your case with the placement of an informative poster in a visible area, reporting that it is a video-monitored area, indicating the person in charge to which to go or in the case of a private area, it will suffice to ensure that the orientation of the cameras is exclusively towards their private space.

The party denounced in the pleadings dated 03/15/19 acknowledges being responsible for the placement of the cameras, although they only obtain images of your private property.

Along with his writing, he provides documentary evidence (photographs No. 1, 2 and 3) that allow analysis of what is manifested, without observing any image of space

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public and/or private third party, the images being partially pixelated in black.

Furthermore, it is made available to this institution or to the

State Security Forces and Bodies (vgr. Civil Guard of the locality) for in

If applicable, verify the system denounced in situ, which excludes a priori the absence of a spurious or malicious purpose.

The registration of personal data files before the Agency

Spanish Data Protection Agency (AEPD) ceased to be mandatory as of 25

May 2018, the date on which the new General Data Protection Regulation becomes mandatory.

If images are captured that imply the commission of a crime or

infringement shall be brought to the attention of the competent authority by means of the delivery of the recordings and accompanied by a complaint.

### III

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).

In the present case, the "suspicions" of the complainant do not invalidate the principle of presumption of innocence put forward, since there is no evidence that the party reported was obtaining images that affect their personal privacy and/or

family.

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IV

In accordance with the foregoing, the commission of infringement is not proven any administrative reason, which is why it is appropriate to order the Archive of this process.

Remind the parties of the importance of the rights at stake, and must avoid instrumentalizing this body for issues more typical of "quarrels neighbors" than the framework of data protection, being able to address the Local Security Forces and Corps for all other disputed matters in your case raised.

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: PROCEED to decree the ARCHIVE of this procedure, since find any administrative violation.

SECOND: NOTIFY this resolution to Don A.A.A. and INFORM the party

Whistleblower Don B.B.B..

In accordance with the provisions of article 50 of the LOPDPGDD, 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 LOPDPGDD, 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 period of

month 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

C/ Jorge Juan, 6

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