

□ Procedure No.: PS/00379/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the claimant) dated June 18, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one). The

reasons on which the claim is based are succinctly:

“the presence of a video-surveillance camera installed on the ground floor of a

property (Under A) that is obtaining images of the claimant's property. I pa-

It seems that this is illegal because I look out on the terrace and he is looking at me and violating my privacy.

half"

“The Community of owners has not given permission and they are certainly not le-

galized” (folio nº 1).

Together with the claim, it provides photographic material (Annex I) that proves the facts

exposed, in relation to the presence of the device and the "treatment of the

images".

SECOND: On 07/10/20 the claim is TRANSFERRED to the party

denounced, so that he may allege what he deems appropriate in law.

THIRD: On 08/21/20, a written statement is received from the defendant

literally stating the following:

“That it does not have any type of camera installed, neither real nor fictitious”

FOURTH: On 09/30/20 a new document is received from the defendant requesting a copy

of the administrative file to take legal action for alleged commission

Crime against privacy provided for in article 197 CP.

FIFTH: There is evidence associated with the claimed-Don B.B.B.—a prior procedure with numbers number A/00339/2015 in which the following was agreed:

“WARN (A/00339/2015) to Mr. B.B.B. in accordance with the provisions of art.

Article 45.6 of Organic Law 15/1999, of December 13, on Data Protection of

Personal Character, in relation to the complaint for violation of article 6.1 of the

LOPD, typified as a serious infringement in article 44.3 b) of the aforementioned Law

Organic”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/5

SIXTH: On February 22, 2021, 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.

SEVENTH: On 03/15/21 a written statement is received from the claimed manifesto.

again “not having any camera”, making himself available to this

Agency to inspect your home on-site, if applicable.

He argues "personal" problems with the denouncing neighbor who he considers

that he has provided false evidence to this body, which is why he will undertake the

necessary legal action.

“In any case, it reiterates I do NOT have a video-surveillance camera(s) installed in the

terrace-garden for a long time as we stated in the declaration of responsibility

ble”.

"Regarding the interior camera of my living room, it is not subject to the RGPD and with information of the same at the door of my home (photograph is provided) after receive the frame of the Agency contributed in its file (...) so I request the acknowledgment foundation of my home to prove such extreme"

FOUNDATIONS OF LAW

Yo

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, the claim dated 06/18/20 is examined by me- of which the presence of a video-surveillance camera installed in the ground floor of a home that is obtaining images of the claimant's property.

The "facts" are specified in the installation of a video surveillance camera that does not comply with the established legal requirements, obtained data from third parties of disproportionately and 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 felled comply with current legislation, proving that it complies with all the requirements demanded by the regulations in force.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

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.

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.

With this type of device it is not possible to obtain image(s) of public space either. co, as this is the exclusive competence of the State Security Forces and Bodies ted.

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 intimidated 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.

III

The defendant denies the "facts" stating that he has removed the camera and that there is a dispute with the claimant who is acting in egregious "bad faith," including committing an alleged criminal act by obtaining images of the interior of his home gives.

The "data processing" of the respondent has not been verified, nor which camera al- some is oriented towards the private space of their home, stating the complaint do that they were withdrawn long ago.

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
thor. 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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/5

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).

IV

In accordance with the foregoing, it is not possible to prove the commission of an administrative infraction, reason why it is appropriate to order the Archive of this procedure.

unto

Both parties are reminded of the importance of the rights at stake, avoiding instrumentalizing this body for issues of "neighborhood quarrels", having to resolve their disputes in the appropriate judicial instances, remember giving them the consequences of exercising actions recklessly or in bad faith.

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 as there is no accredited the commission of any administrative infraction.

SECOND: NOTIFY this resolution to Don B.B.B. and REPORT the result of the actions to the AAA claimant.

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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/5

938-131120

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es