

Procedure No.: PS/00287/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: On April 12, 2019, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter referred to as the claimant),
through which he makes a claim against B.B.B. with NIF ***NIF.1 (*hereinafter, the
claimed), for the installation of a video surveillance system installed in
***ADDRESS.1, there being indications of a possible breach of the provisions of
the art. 5.1 c) GDPR.

The reasons that support the claim are "installation of a camera in
housing facade" with presumed orientation towards public road.

Attached photograph of the facade (doc. nº 1) where the installation of
some kind of device, oriented towards public space.

SECOND: Prior to the acceptance of this claim for processing, it is
transferred the claimed, in accordance with the provisions of article 65.4 of the Law
Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of
digital rights (hereinafter, LOPDGDD). The result of this action is
describes below.

"There is no response from it in relation to the facts that are reported to it.
move"

THIRD: The claim was admitted for processing by resolution of July 29
of 2019.

FOURTH: On 10/28/19, the Start Agreement of PS/00287/2019 was issued for the alleged installation of a video surveillance camera that could be illegal, conduct contrary to the content of art. 5.1 c) RGPD, being typified in art. 83.5

a) RGPD, being the same object of notification for the appropriate legal purposes.

FIFTH: On 11/28/19, this Agency received a written statement of allegations from the denounced stating that it is a dissuasive camera, providing evidence documentary evidence of its character.

Provides documentary evidence (Doc. nº -2) that proves the fictitious nature of the device denounced, in support of their statements on the facts prosecuted.

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2/5

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), recognizes each

Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the

LOPDGDD, the Director of the Spanish Data Protection Agency is

competent to initiate and resolve this procedure.

II

In the present case, we proceed to examine the claim dated 04/12/19 by

means of which the following is transferred as the main fact:

"Installation of a camera on the facade of the house" with presumed orientation towards

public road (folio nº 1).

The facts described above suppose a violation of art. 5.1 c)

RGPD that provides the following: "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");

Individuals can install video-surveillance cameras, although they are responsible that they comply with current legislation, and must be properly oriented towards private space, not being able to obtain images of the public road.

On the other hand, in accordance with the provisions of article 22 of the LOPDGDD, referring specifically to the "Processing for video surveillance purposes", the processing of images in public places can only be carried out -if applicable and prior compliance with the legally enforceable requirements-, by the Forces and Security Bodies, unless the exception established in the aforementioned Article 22 of the LOPDGDD for individuals or legal entities, public or private, respecting the conditions required in said article.

Likewise, this type of "device" must have the mandatory sign information in a visible area, indicating the person in charge of the file before whom you can address, informing citizens of their rights.

With this type of cameras it is not possible to control the public sidewalk, disturbing the ambulatory freedom of passers-by, who are intimidated by it.

On 11/28/19, a written statement was received from the accused party stating that it is a dissuasive camera, installed for reasons of security.

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Analyzed their characteristics, it is concluded that the device in question does not "process personal data", fulfilling a function merely deterrent.

It should be remembered in relation to this type of device, the recent Judgment of the Supreme Court, Civil Chamber (STS 3505/2019, 11/07/19) "that the fake security cameras also represent an illegitimate intrusion into the intimacy since those affected do not have to endure "uncertainty permanent" on whether or not the device is operational."

"The plaintiff's right to the tranquility of his private life includes also that of not having to endure a permanent uncertainty about whether the camera oriented towards his farm is operational or not, since its external appearance prevents verification and, on the other hand, the defendant would always have the possibility of replace the non-operative chamber with another operative one".

"For the same reasons, the installation of the camera facing the garden of the plaintiff cannot be considered an exercise of a ius usus inocui in the field of neighborhood relations, because far from being innocuous, it objectively disturbed, and without necessity, the life of the plaintiff."

So this type of behavior can have repercussions on other spheres of law, by affecting the privacy of third parties, who are intimidated by this type of device, so it is recommended that they be exclusively oriented towards their particular property, thereby avoiding new complaints with the consequent cost for the person in charge of the installation.

These types of devices can fulfill a "deterrent" function, having as a limit the proportionality of the measure, which is fulfilled by avoiding intimidating

third parties and being oriented towards the main strategic points of the lived

(eg orientation towards public roads, adjoining windows, etc. is not allowed).

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

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4/5

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).

IV

In accordance with the foregoing, it can be concluded that the apparatus reported is of a

"simulated", not being endowed with the capacity to obtain or record any image,

so that since there is no "data processing" it is not possible to speak of conduct

infringing within the scope of the regulatory framework of data protection,

without prejudice to its analysis in other legal spheres, which is why the

File of this procedure.

Therefore, according to the above,

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

results of the performances to Don A.A.A..

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.

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 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.

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5/5

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