

□ Procedure No.: PS/00434/2020

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 August 11, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against BAR EL SOLAR DE HILARIO with NIF 72078121P (in

later, the claimed one). The grounds on which the claim is based are

succinctly the following:

“That being on the terrace-parking lot of the “Solar de Hilario” Bar, in the

Avenida de España 1520 in Mogro (Miengo), we realized that the owner of the

bar is recording with at least two cameras not indicated on any poster, and

concealed in the part of the roof, placed both for the terrace and for areas

streets, when the Organic Law on Data Protection does not allow users to

video surveillance systems capture images of people outside

of private space or recording of public space”

Together with the claim, it provides documentary evidence (Annex I) that proves the

presence of two simulated devices on the facade with evident orientation towards

public space.

SECOND: On 09/07/20, the claim is TRANSFERRED to the

entity denounced to prove the legality of the system, not having received

no response to date.

THIRD: On March 3, 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.

FOURTH: On 04/27/21 cooperation is requested from the Local Police (City Hall Miengo) so that, transferred to the scene of the events, they can prepare the Act-Complaint accrediting do the possible infraction described, without any response having been given in this regard.

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 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.

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2/4

II

In the present case, the claim dated 08/11/20 is examined by me- from which the main fact is transferred as "the presence of two video cameras- Surveillance installed in a hidden way on the facade of the Bar Solar De Hilario with obvious orientation towards public space.

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.

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 should preferably be oriented towards the space

particular, avoiding intimidating neighboring neighbors with this type of device, as well

how to control their transit areas 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.

On the part of individuals, it is not possible to install devices for obtaining

images of public space or transit area of third parties, outside the cases permitted

ted in the regulations.

III

In accordance with the evidence available in this proceeding,

sanctioning party, it is not possible to determine the commission of any infraction, given the lack

of response to this Agency of the claimed.

Given that no documentary evidence of the access door is provided, nor of the

higher than it, it is not possible to determine if it has an informative poster or not,

informing that it is a "video-surveillance area", so the infraction in principle

pio is limited to the installation of exterior cameras with excessive capture of the area of

public transit without just cause.

Article 42 of the legislation on private security (law 5/2014, April 5) indicates

also the following: "cameras or video cameras may not be used for security purposes.

private security to take images and sounds of roads and public spaces or access

public use except in the cases and under the terms and conditions provided for in its regulations.

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3/4

specific requirement, prior administrative authorization by the competent body in each case".

Therefore, surveillance cameras on public roads may not be installed by companies.

private security prisoners or by ordinary citizens, for example, to monitor their ve-

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Known facts could constitute an infringement, attributable to the claimant.

mado, for violation of article 5.1 c) RGPD.

However, repeatedly requesting the collaboration of the Authorities

authorities of the locality, so that they can be transferred to the scene of the events and certify

mentally manifested by the claimant, no answer has been given to

this Agency.

IV

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.

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).

The mere presence of the cameras does not certify their operability or

that these without the due verification in situ are badly oriented towards the zone of

public character.

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4/4

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According to the above, it has not been possible to determine the commission of the infringement
any administrative action in the reported establishment.

It is worth remembering the possibility of filing a new claim with the Local Police.

cal (Ayuntamiento Luengo) which is responsible for transferring this body

of all the necessary documentation to assess the commission of an infraction

as described, after drawing up the mandatory Act (Complaint) at the scene of the events.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria
tion of the 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 evidence
gives the commission of any administrative infraction.

SECOND: NOTIFY this resolution to the claimed BAR EL SOLAR DE

HILARIO and INFORM the AAA claimant of the result of the proceedings.

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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

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