

Procedure No.: PS/00082/2019

938-0319

RESOLUTION OF PUNISHMENT PROCEDURE

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

A.A.A., by virtue of a claim filed by D. G. DE LA GUARDIA CIVIL-

POSITION OF MENTRIDA-- (hereinafter, the claimant) and based on the following:

FACTS

FIRST: D. G. OF THE CIVIL GUARD - MENTRIDA POSITION (hereinafter, the

claimant) dated January 17, 2019 filed a claim with the Agency

Spanish Data Protection, motivated by the alleged treatment of data

carried out through cameras of a video surveillance system whose holder identified

It's A.A.A. with NIF ***NIF.1 (hereinafter the claimed) installed in ***ADDRESS.1.

The grounds on which the claim is based are the presence of a device equipped

of a red pilot, facing public space without just cause (folio no.

1).

"Said person has ignored any indication by the

instructing force to remove the cameras" (folio nº 1).

Along with the Act-Complaint, provide documentary evidence (photograph No. 1) that

proves the presence of some type of device on the facade of the property.

SECOND: In view of the reported facts, in accordance with the evidence

that is available, the Data Inspection of this Spanish Agency for the Protection of

Data considers that the alleged treatment of personal data that is carried out

by the accused through the chambers to which the complaint refers, does not comply

the conditions imposed by the regulations on data protection, so

The opening of this sanctioning procedure proceeds.

THIRD: On February 20, 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 prescription in article 72.1 a) of the LOPDPGDD.

FOURTH: On 03/07/19, this body receives allegations from the party denounced stating that the device is a FALSE Camera, installed with a deterrent purpose.

“On the question that leads us to the Orientation of said FALSE camera, could be affected by a neighbor, pedestrian or person who is uncomfortable because of the belief that the camera records them, that said orientation is parallel to the door of the garage where it is located, trying to make the orientation as little invasive to public roads (...).

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I A.A.A. I offer to solve any doubt that may remain of the veracity of what I expose here and I am available to anyone who needs it, to DO NOT create another problem with this topic”

"Therefore I REQUEST: That you kindly proceed to Archive the file (...)".

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 01/17/19 a claim was received from the General Directorate

Civil Guard (Méntrida-Toledo) through which it transfers as main fact:

"Said person has ignored any indication by the
instructing force to remove the cameras" (folio nº 1).

Along with the Act-Complaint, provide documentary evidence (photograph No. 1) that
proves the presence of some type of device on the facade of the property.

SECOND: It is identified as the main person in charge Mr. A.A.A., who
acknowledges being responsible for the installation of the reported device.

THIRD: It is found that the device in question is a FAKE camera
installed by the defendant for security reasons.

Attached document (photograph No. 1) arguing that it is a camera
false and making itself available to any public authority for verification
of the manifested.

FOURTH: The purpose of the installation is of a dissuasive nature, to protect the
garage, being the same placed perpendicular to the door.

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 dated 01/17/19 by
by means of which the following facts are transferred to this Agency:

The grounds on which the claim is based are the presence of a device equipped
of a red pilot, facing public space without just cause (folio no.
1).

"Said person has ignored any indication by the
instructing force to remove the cameras" (folio nº 1).

Along with the Act-Complaint, provide documentary evidence (photograph No. 1) that accredits the
presence of some type of device on the facade of the property.

The facts described may involve conduct contrary to the regulations in
force in terms of data protection, as the person in charge of the system can be

Obtaining images of public roads and passers-by without just cause to
it.

Article 5 RGPD 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");

It should be remembered that individuals can install video-surveillance cameras,
but that they must be responsible that they comply with current regulations,
avoiding the capture of public and/or private space of third parties without just cause.

On 03/07/19, this body receives allegations from the party
denounced stating that the device is a FALSE Camera, installed with a
deterrent purpose.

Together with the allegations, it provides documentary evidence (photograph No. 1)
stating that it is a deterrent camera model.

The installation of this type of device is not prohibited by our
legal system, notwithstanding that its installation is carried out with the
logical caution, avoiding situations that could be a "nuisance" for third parties
who can be intimidated by these types of devices.

To the above add that it is recommended in case of request for explanations
by the Security Forces and Bodies, proceed to explain the characteristics of the
itself, avoiding situations like the current one, which has given rise to a Complaint

administration and the intervention of this body, with the logical inconveniences also for the accused party.

Within the models of simulated cameras, the defendant has opted for one that due to its characteristics, in relation to the small space to monitor, protrudes excessively, giving the impression of obtaining images of space public, being recommended a reinstallation of the same.

In relation to this type of device by not "processing personal data" one cannot speak of typical behavior from the point of view of law sanctioning administrative, without prejudice to the reproach in other areas (vgr. civil) in case of persisting an attitude of annoyance for third parties, who do not have to be seen intimidated by a device with the characteristics described.

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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 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).

IV

According to the arguments, it can be concluded that the denounced device is of simulated character, this is not, "processes personal data", which is why the transferred conduct does not deserve reproach from the point of view of the Law sanctioning administrative.

Notwithstanding the foregoing, it is recommended that the defendant adopt all precautions necessary (orientation preferably towards their private space) to avoid new Complaints before third parties, with the consequent expense for the Administration and thereby avoiding the logical "hassles" of having to give the appropriate explanations.

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 FILE of this procedure by not the commission of any administrative infraction must be accredited.

SECOND: NOTIFY this resolution to the defendant Mr. A.A.A. and

INFORM the denouncing authority-- D. G. OF THE CIVIL GUARD- POSITION OF

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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 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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