

Procedure No.: PS/00167/2019

RESOLUTION: R/00449/2019

In procedure PS/00167/2019, instructed by the Spanish Agency for Data Protection to Don A.A.A., given the complaint filed by Don B.B.B. and in virtue of the following,

FACTS

FIRST: On 10/01/18, this Agency received a complaint from the Civil Guard —Comandancia Huesca-- (Interior Ministry) of the local resident Don B.B.B., demonstrating the alleged illegal installation of at least four video cameras-surveillance identifying as the presumed responsible the resident of the locality Don A.A.A. (hereinafter the claimed) installed at ***ADDRESS.1.

The grounds on which the claim is based are as follows:

“That your neighbor has placed four video-surveillance cameras on a road adjoining his property, that of said road the complainant enjoys easement incidentally (...) alleging that his neighbor violates the privacy of his farm and that of all the people who pass through the aforementioned road”

“That this situation has been going on for about a year until a discussion began last June. which attached to the denounces an expert report made on 09/18/18 consisting of 45 pages printed on one side” (folio nº 1).

SECOND: Due to the claim, the party was TRANSFERRED denounced on 10/15/18 the claim to argue about the legality of the system in question, appearing as "Notified" in the computer system of this organism.

THIRD: On 03/06/19 and 03/14/19 briefs of allegations are received from the

defendant, as well as various photographic material in support of their claims,

Although analyzed it is considered insufficient to proceed to decree the

File of this administrative procedure.

FOURTH: On July 2, 2019, the Director of the Spanish Agency for

Data Protection agreed to submit this

warning procedure PS/00167/2019. This agreement was notified to

denounced.

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FIFTH: On 07/29/19, this AEPD received a written statement of allegations from the party

denounced by means of which:

-Provides Judgment No. 000071/2019 issued by the Provincial Court of

Hueca on 05/31/19.

-Provides screen printing (Annex Doc. I, photographic evidence 1-3).

PROVEN FACTS

First. On 10/01/18, a claim was received from the complainant through the

which is transferred as the main fact:

“That your neighbor has placed four video-surveillance cameras on a road

adjoining his property, that of said road the complainant enjoys easement

incidentally (...) alleging that his neighbor violates the privacy of his farm and that of all the

people who pass through the aforementioned road”

“That this situation has been going on for about a year

until a discussion began last June. which attached to the

denounces an expert report made on 09/18/18 consisting of 45 pages

printed on one side" (folio nº 1).

Second. It is identified as the main responsible Mr. A.A.A.,

Third. The installation of the system was carried out by the company Unión de Montajes Eléctricos

S.L, lacking the display screen system, so access only

It can be done through a network device with the access codes to the system.

Fourth. The presence of an informative poster(s) is accredited, although with reference to the previous regulations (LOPD).

Fifth. The images provided have a privacy mask, being the same proportionate to the purpose pursued, without affecting the right of third parties.

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 art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

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In the present case, we proceed to examine the Complaint forwarded to this Agency by the Civil Guard (Interior Ministry) on the occasion of the complaint of the neighbor of the town-

Don B.B.B.—as a result of the installation of four video-surveillance cameras with presumed orientation towards public space.

The facts described above may affect the content of article 5.1 letter c) RGPD, which provides the following: "The data personal will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization").

It should be remembered that individuals can install video surveillance cameras although they assume the responsibilities that they comply with the provisions in force on the matter.

In no case will the use of surveillance practices be admitted beyond the environment object of the installation and in particular, not being able to affect the spaces surrounding public, adjoining buildings and vehicles other than those accessing the guarded space.

For informational purposes only, it is worth remembering some of the requirements that must be comply with the processing of images through a video surveillance system to be in accordance with current regulations:

III

- Respect the principle of proportionality.
- When the system is connected to an alarm center, you can only be installed by a private security company that meets the requirements contemplated in article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of the people who are outside the private space since the treatment of images in places public can only be carried out, where appropriate, by the Forces and Bodies of Security. Nor can spaces owned by third parties be captured or recorded without

the consent of their owners, or, as the case may be, of the persons who are find.

- The duty to inform those affected provided for in article

12 of the RGPD 2016/679, of April 27, 2016, in the terms referred to both in the

cited article, as in articles 13 and 14 of said rule, resulting from the application

-by not contradicting the provisions of the aforementioned Regulation-, the manner provided in the

Article 3 of Instruction 1/2006, of November 8, of the Spanish Agency for

Data Protection, on the Processing of Personal Data for the Purpose of

Surveillance through Camera Systems or Video Cameras (Instruction 1/2006, of 8

of November, of the Spanish Data Protection Agency).

Specifically, it must:

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Place in the video-monitored areas, at least one badge

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informative located in a sufficiently visible place, both in spaces

open as closed.

In accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679, of April 27, 2016, in the informative sign above

mentioned must identify, at least, the existence of a treatment, the

identity of the person in charge and the possibility of exercising the rights provided in

these precepts.

Keep available to those affected the information to which

two.

refers to the aforementioned Regulation (EU) 2016/679, of April 27, 2016.

IV

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 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).

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In accordance with the foregoing, it can be concluded that according to a judicial pronouncement (doc. no.

1) The transit zone is not classified as a "right of way", beyond the use

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that the neighbors of the area in question can do.

From the point of view of data protection, there is no accredited control of the area, which affects the privacy of passers-by, fulfilling a purpose of protection of their private property, beyond the mere "speculations" of the complainant.

The images provided are from the exclusive area of the accused, which capture the area of the wall (back part of the Restaurant on your property) with the purpose of protecting the establishment and its belongings, in such a way that obtains any image of the passage area, being only an appreciation of the complainant.

Although the installation is not the most suitable, it achieves the same purpose installing the cameras inside the establishment oriented towards the area to be protect (eg rear wall of the same), according to the evidence provided does not any administrative infraction can be accredited, being a personal matter of the responsible for the way in which it has wanted to protect the property outlined.

The parties are reminded that personal conflicts between them must settle in the competent judicial venues, not having to instrumentalize this agency for issues other than data protection.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- PROCEED to decree the FILE of this procedure, since there is no accredited administrative infraction.

2.- NOTIFY this Agreement to Don A.A.A. and INFORM the party

Whistleblower Don B.B.B..

Against this resolution, which puts an end to the administrative procedure (article 48.2 of the LOPD), and in accordance with the provisions of articles 112 and 123 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, the interested parties may optionally file appeal for reconsideration before the Director of the Spanish Data Protection Agency within one month from the day following the notification of this resolution, or, directly contentious-administrative appeal before the Chamber of the Contentious-administrative of the National Court, in accordance with the provisions of the Article 25 and in section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction, within the period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned legal text.

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