

□ Procedure No.: PS/00218/2020

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 March 31, 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 the presence of a video-surveillance camera
that could affect their private sphere without just cause (folio nº 1).

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

SECOND. On 06/14/20, a written statement was received from the party

denounced proving the existence of an informative poster, as well as denying the
capture of private space of the adjoining property, limiting itself to the space of its
private terrace.

THIRD. On 06/17/20 documentary evidence is received (Photograph No. 1) that
allows you to analyze what is captured with the camera in question.

FOURTH. On October 26, 2020, 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.

FIFTH. On 10/29/20, allegations were received from the accused party
succinctly stating the following:

The defendant "sends photographs of the current situation of the property and of the

modifications made so as not to presumably annoy the claimant. Declares that

the data is true and that no information has been omitted or falsified (...)."

"Tell you that the camera located on my terrace is for totally private use

and it was installed as a protection measure to prevent theft and attempted squatting

that in the area there is an increase in these crimes. A fence was also installed

2m metal. high with concealment mesh and a horizontal awning to

protect my privacy. Remaining at your entire disposal (...)."

PROVEN FACTS

First. He is accredited as the main person responsible for the installation of the

cameras Mr. B.B.B., who recognizes the installation for security reasons.

Second. There is evidence of the presence of a green mesh that has been installed

to avoid any sharp capture of the complainant's home.

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Third. There is no accredited obtaining of image(s) of the private space of the

complainant.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-

rector of the Spanish Agency for Data Protection is competent to initiate and

to solve this procedure.

II

In the present case, the claim dated 03/31/20 is examined by me-
from which the installation of a camera in the pro-
mercy of the accused that could affect the private space of the same without cause
justified

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.

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 inti-
measured by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining
images of public space, outside the cases allowed in the regulations.

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III

The accused party acknowledges being responsible for the installation of the heating system.

security maras, although it states “it does not affect the private area of third
ros”.

As has been indicated, individuals can install video-surveillance cameras in
their private property, in order to protect it from unlawful occupations.

desired or situations of robbery with force in things, it is enough that the same
but they are directed to their private land.

Article 22 section 1 of LO 3/2018 (December 5) provides the following:

“Physical or legal persons, public or private, may carry out the
processing of images through camera systems or video cameras with the purpose of
to preserve the safety of people and property, as well as its installations.
nes”.

Likewise, in a letter dated 10/29/20, it states that it has adopted all the
necessary measures to avoid any inconvenience to the adjoining neighbor, having ins-
cut a mesh in the dividing wall that prevents the clear capture of any
image. (Annex I Photograph No. 1).

The evidence provided by the complaining party was initially based on
mere "assumptions" as the cameras are visible from their private property, although
It has not been possible to demonstrate that they affected their personal (family) environment or
that with the same personal data is processed.

The accused party has shown total collaboration with this Agency.

accepting any indication (if necessary) in relation to the system

video-surveillance installed, which excludes any bad faith in compliance with the regulations in force.

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

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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).

IV

In accordance with the foregoing, having analyzed the arguments of the parties, it can be concluded

that no administrative infraction has been proven in the matter at hand,

reason for which the File of this procedure proceeds.

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 in the matter that concerns us.

SECOND: NOTIFY this resolution to B.B.B. and REPORT the result

of performances to A.A.A..

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

Sea Spain Marti

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