

□ Procedure No.: PS/00253/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: Mrs. A.A.A. (hereinafter, the claimant) dated January 30, 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

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

“He has a surveillance camera that he supposedly told me only focused

to the front door for security and the sound was off. for a mishap

vacuuming I broke the television, he sent me the video which does not focus the

entrance door as assured and on top of that it has sound, I felt spied on since

focuses on part of the room where I have had private conversations on the phone and

He was able to see everything he did. Not only is it here, an expert had to come to see the

damage and was listening to the conversation and watching us” (folio nº 1).

Together with the claim, he provides a CD in support of his claim on the

facts described (Proof No. 1) that corroborate the presence of the device in

the small table in the hall of the premises leased as a dwelling.

SECOND: On 06/18/20 the respondent requests from this Agency a copy of the

administrative file for the appropriate legal purposes.

THIRD: On 03/24/20, the claim is TRANSFERRED to the

denounced so that he can express what he considers opportune in relation to the facts  
exposed.

"I do not understand why the Complaint has been received at my ex-partner's house, NO

I understand the reason for the Complaint, because the camera is inside my house, it is not a local as indicated in the letter but my private home. The camera is from table lamp bought on Amazon, located in the furniture of the hall and focuses towards the interior (...) to scare away potential thieves. The data is stored in a memory card installed in the same camera and the only person who has access It's me".

FOURTH. On September 1, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the defendant, with glo to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-Common Administrative Procedure of Public Administrations (hereinafter, LPA-CAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

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FIFTH. On 10/07/20, a copy of the Statement of Declaration made before the State Security Forces and Corps by the defendant himself dated 01/17/20, where he acknowledges being responsible for the installation of a camera in the interior of the room rented to the complainant.

SIXTH: Attached as an annex is a list of documents in the procedure, being at your disposal the content of the administrative file.

SEVENTH. On this date, a Resolution proposal is issued by means of which proves the infringement of the content of art. 5.1 c) RGPD, proposing a sanction in the amount of €5,000 (Five Thousand Euros).

EIGHTH. When the database of this organization was consulted on 11/30/20, no received any allegation in relation to it, nor has the payment of any amount for the appropriate legal purposes.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

#### PROVEN FACTS

First. On 01/30/20, this AEPD received a claim from the complainant for means of which transfers the following:

“He has a surveillance camera that he supposedly told me only focused to the front door for security and the sound was off. for a mishap vacuuming I broke the television, he sent me the video which does not focus the entrance door as assured and on top of that it has sound, I felt spied on since focuses on part of the room where I have had private conversations on the phone and He was able to see everything he did. Not only is it here, an expert had to come to see the damage and was listening to the conversation and watching us” (folio nº 1).

Second. It is identified as the main responsible B.B.B., which is the owner owner of the property where the camera was installed, not denying being the rest responsible for its presence.

Third. In the statement provided before the Security Forces and Bodies (Directorate General Information of the Police 01/17/20) states that “he has rented two rooms to a girl named A.A.A.” “That from the beginning A.A.A. knew of the existence of camera at the entrance of the house and that works as a deterrent for thieves”.

Fourth. There is no contract with a specific clause on data protection, informing of the purpose of their treatment.

Fifth. There is no evidence that the defendant had an information poster on the door of access to the rented premises as a dwelling, informing that it was an area

video-surveillance.

Sixth. It is known that the images obtained from the webcam-cam have been used at the  
affirm in a statement dated 01/17/20 before the General Police Directorate

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"That by showing the images to A.A.A., they deny what happened."

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 01/30/20 is examined by me-  
of which the claimant reports as the main fact the following:

"Installation of a camera in the house that you have rented, obtained images  
of the interior of the same without just cause" (folio nº 1).

The facts are specified in the installation by the denounced of a device  
(web-cam) that you have used to obtain images/sound of the lease.

taria of the same, without just cause, proceeding to treat the data of this without  
There is no apparent reason.

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 more installed 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 sign informative, indicating the purposes and responsible for the treatment in your case of the data of a personal nature.

In the present case, we find ourselves with a lease whose leased object is to satisfy the primary and permanent housing need of the tenant (a).

A video camera is installed in the property covered by the contract. surveillance (web-cam), specifically in the room under its use and enjoyment, so that it allows the landlord to obtain images of the interior of the room (what lime as a dwelling) and proceed to listen to what happens in it.

From the moment in which the use (enjoyment) of the property was transferred to a third party (tenant), the notion of "personal and domestic sphere" disappears, capturing images of third parties subject to data protection regulations these, being mandatory to comply with a series of guarantees that are included in the regulations in force, especially if the owner was primarily responsible for the images nes that were obtained from entering/exiting the dwelling in question.

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The description that the Constitutional Court makes regarding the concept of do-

micilio, taking as such "the space where the individual lives exercising his freedom more intimate, outside social conventions".

The inviolability of the home protects not only the physical space itself, considered but what is in it of emanation of the person and of his private sphere, having defined by the Constitutional Court, in its judgment No. 22/1984 (Rec.59/1983), of 17 of February, the inviolable domicile as: "a space in which the individual lives without being be necessarily subject to social uses and conventions and exercise their freedom more intimate".

III

In accordance with the evidence available in this proceeding, sanctioning procedure, it is considered that the defendant had a web-cam, processing data of the claimant through the device installed inside of the dwelling (premises) that he proceeded to lease, treating the same without just cause-gives.

Specifically, the images obtained are used by the same to reproduce char to the tenant the breakage of the television screen that was in the inside the house.

Declaration before the State Security Forces and Bodies (Declaration date (01/17/20) "That when viewing the images she looks like Mrs. AAA, while wearing the vaccum cleaner. He has knocked over the screen and has broken the television, the screen and a design table what's behind".

So it is proven that the orientation of the camera was not in exclusive as he asserts "only towards the entrance of the door", since the television is was inside the passenger compartment, and only by viewing the images could know with such precision of detail that the breakage of the television occurred "when passing the vacuum cleaner and that it affected a designer table behind it".

The accredited known facts constitute an administrative infraction.

tive, attributable to the claimed, for violation of the content of article 5.1 c) RGPD.

#### IV

Regarding the alleged inexistence of guilt in committing the offending conduct,

Torah. In this sense, there is no doubt that guilt constitutes an essential note in

sanctioning matter and that the so-called strict liability has no place in De-

sanctioning administrative law.

Indeed, article 28 of Law 40/2015 (October 1) provides that "They may only

be sanctioned for acts constituting an administrative infraction natural persons

and legal, as well as, when a Law recognizes them capacity to act, the groups

after those affected, the unions and entities without legal personality and the patrimonies

independent or autonomous, who are responsible for them by way of

fraud or guilt".

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This simple non-observance cannot be understood as the admission in the Law

administrative penalty of strict liability, since the doctrine of the Court

Constitutional (Sentences 15/1999, of July 4, and 76/1990, of April 26) and the juris-

majority prudence of our Supreme Court (for all Judgment of 23 of

January 1998), as well as the requirements inherent to a rule of law, require

that the principle of culpability requires the existence of fraud or negligence.

The Supreme Court (Sentences of April 16 and 22, 1991) considers that of the ele-

element of culpability, it follows "that the action or omission, qualified as an infraction

sanction administratively, must be, in any case, attributable to its author, by intent or recklessness, negligence or inexcusable ignorance.”

The National Court, in Judgment of June 29, 2001, in matters of protection of personal data, has declared that “simple negligence or in compliance is enough fulfillment of the duties that the Law imposes on the persons responsible for files or of data processing to exercise extreme diligence...”.

The Supreme Court (Judgments of July 5, 1998 and March 2, 1999) comes understanding that recklessness exists whenever a legal duty of care is disregarded. given, that is, when the offending subject does not behave with the required diligence. Dili- agency whose degree of demand will be determined in accordance with the circumstances current in each case, such as the special value of the protected legal interest or the professionalism required of the offender. In this sense, the aforementioned Judgment of June 5 of 1998 requires professionals in the sector "a duty to know especially the applicable rules".

In the present case, the defendant is responsible for the installation of a web-cam, having obtained personal data from the accused, for a purpose not per- mitigated by the legal system, as was the use of the same to reproach the "breakage" of a television of his property, for which the intentionality is accredited of the defendant by way of gross negligence at least.

Article 83.5 RGPD provides the following:

v

“Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, alternatively, being from a company, of an amount equivalent to a maximum of 4% of the volume overall annual total turnover of the previous financial year, opting for the higher amount:



a)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

When motivating the sanction, the following is taken into account:

-the seriousness of the infraction when obtaining data(s) from a space reserved for the privacy, as was the space leased to the claimant, being able to listen to the

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versions of the same and treating the data of this without just cause (art. 83.2 a)

GDPR).

-the intentionality or negligence of the infringement, by not reporting in the contract lease of the purpose of processing the data obtained with the device

vo denounced and exceed the limits in the recording area (article 83.2 b) RGPD).

In this case, the seriousness of the facts described is taken into account,

that suppose an attack on the inviolability of the home, in this case the object of

treatment to the complainant, proceeding to treat data of the same in their chores

newspapers without just cause, all of which justify imposing a criminal sanction.

frada in the amount of €5,000 (Five Thousand Euros).

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: IMPOSE Don B.B.B., with NIF \*\*\*NIF.1, for a violation of Article

5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a fine of €5,000 (Five

A thousand euros).

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

result of the actions to the complainant Doña A.A.A.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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

Interested parties may optionally file an appeal for reconsideration before the

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

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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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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