

Procedure No.: PS/00255/2019

RESOLUTION: R/00388/2019

In procedure PS/00255/2019, instructed by the Spanish Agency for Data Protection to Doña A.A.A., given the complaint filed by Doña B.B.B. Y under the following,

#### FACTS

FIRST: Mrs. B.B.B. (\*hereinafter, the claimant) on 08/10/18 filed claim before the Spanish Agency for Data Protection, motivated by the data processing carried out through cameras of a video surveillance system whose owner identifies as the neighbor of the town A.A.A. with NIF \*\*\*NIF.1 (in later the one claimed) installed in windows.

The reasons on which the claim is based are that the installation has been detected of at least one video-surveillance camera facing the street, with the same installed in the window of the accused, without having an information poster (folio no. 1).

Together with the claim, it provides documentary evidence (Annex I) that proves the installation of a video-surveillance device in the window of the property reviewed.

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 treatment of personal data that is carried out by the denounced through the chambers to which the complaint refers, does not meet the conditions imposed by the regulations on data protection, for which reason the opening of this sanctioning procedure.

THIRD: On 10/03/18, the claim was TRANSFERRED to the party denounced so that he could allege what he deems appropriate in law, without

any statement has been made to this body for legal purposes

opportune.

FOURTH: On 07/31/19, a written statement is received from the accused party stating the following:

“That the owner of the home, as well as the person responsible for installing the camera corresponds to Don C.C.C., being the accused, mother of the one who subscribes, so no responsibility can be attributed to it.

That on 11/09/18 and 07/14/19 he already proceeded to make allegations in relation to the complaint filed.

That in response to the request made, I enclose photographs where the camera is located, informing you that the purpose of the

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itself was to focus on the door of my house in the face of the damage that was being causing by Don D.D.D. (...) father of the complainant B.B.B., who He has a restraining order against my mother.

Two convictions are attached regarding the father of the now complainant, for damage caused to the door owned by Don C.C.C. and by threats, as well as photographs in documents nº1, 2 and 3.

As Doc. n4, a supporting copy of the ownership of the home is attached to name of Don C.C.C.

For these reasons, I REQUEST (...) that having presented this document together with with the documents that accompany it, it is served to admit it and, by virtue of it, they are considered

made the allegations required at the beginning of the procedure (...)."

## PROVEN FACTS

First. On 08/10/18, this Agency received a claim from the complainant

by means of which it transfers as main fact:

"...has detected the installation of at least one video-surveillance camera with facing the street, being the same installed in the window of the accused, without having an informative poster" (folio nº 1).

Second. It is identified as the main person in charge, Mrs. A.A.A., who acknowledges having a recording device for reasons of personal security, although

The person responsible for the custody of the images is the son of this Don C.C.C.

Third. It is proven that the reason for the installation is due to the reiteration of acts of vandalism and even criminal acts carried out against his person/property by the local neighbor—Don D.D.D..

In support of his claim, he provides a copy:

-Copy Sentence (Trial for crime XXX/2018 Doc. nº 1)—Minor Crime of threats".

-Copy Sentence (Trial on Minor Crimes YYYYYYYY/2018) against Mr. D.D.D., being convicted of a minor crime of property damage (art. 263 CP) "for spitting on the door of the person claimed".

Fourth. There is evidence of the use of the images in court to prove the authorship of criminal acts, serving as the basis for the conviction, after the free assessment by the Judge ad hoc.

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## 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

In the present case, we proceed to examine the claim of entry date 08/10/18 through which the following facts are transferred "the installation of at least one video-surveillance camera facing the street, the same being install in the window of the accused, without having an informative poster (folio nº 1).

The facts described above may imply an affectation of art. 5.1 c)

RGPD, which provides:

"Personal data will be: c) adequate, pertinent and limited to the necessary in relation to the purposes for which they are processed ("minimization of data").

Cameras installed by individuals must be oriented preferably towards their private space, not being able to obtain images of space public, nor be oriented towards the same, counting on the distinctive mandatory informative for the appropriate legal purposes.

The treatment of images in public places can only be carried out -if applicable and prior compliance with the legally enforceable requirements-, by the Forces and Security Forces, unless the exception established in article 4.3 operates of Instruction 1/2006, of November 8, of this Agency, which establishes: "the

cameras and video cameras installed in private spaces will not be able to obtain images of public spaces unless it is essential for the purpose of surveillance that is intended, or is impossible to avoid because of the location of those. In any case, any unnecessary data processing should be avoided. for the intended purpose”

The individual responsible for the installation must be available to certify before this Control Authority that it meets all the requirements legal requirements, indicating where appropriate the reason for the installation.

The party denounced in the pleadings dated 07/31/19 acknowledges being responsible for the installation of a single camera, installed due to conduct criminal actions against the claimed person carried out by Don D.D.D.

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In support of his claim, he provides a copy of the Judgment (Trial for a crime XXX/2018 Doc. No. 1)—Minor Crime of Threats” where it is considered proven the existence of slight threats by the referenced.

A copy of the Judgment (Trial on Minor Offenses) is also provided.

YYYYYYYY/2018) against Don D.D.D., himself being sentenced for a minor crime of patrimonial damages (art. 263 CP) “for spitting on the door of the person claimed”.

The defendant has used the images to prove the authorship of the facts, responsible result the referenced (father of the current claimant before this organism).

It should be noted that this Agency has established its total rejection as a criterion

towards vandalism and/or criminal acts whatever their nature, carried out in surreptitiously in the belief that they will have no consequences, maintaining that a restrictive interpretation of the norm cannot suppose a double punishment to the person affected by the described acts, who would otherwise be seen devoid of any means to prove their authorship and responsibility.

Videographic evidence is admitted as evidence in our legal system, so that its free assessment corresponds to the Judge of Instruction closest to the scene.

In cases such as the one described, where there is more than one pronouncement judicial, even a certain flexibility is allowed in the installation of this type of devices, in order to avoid new criminal acts, provided that the images are inform the State Security Forces and Bodies or Judge of Instruction closest to the scene.

### III

It should be noted that the installed camera is an ideal measure to avoid the repetition of the behaviors described, given that otherwise it would be left in a situation of total defenselessness of the claimed party, which would continue to suffer the attacks of the neighbor identified as Don D.D.D.

Furthermore, despite establishing a restraining order for temporary period of "three months" (Judgment 01/18/19) the aforementioned convicted, insists on conduct contrary to the required legal parameters, attempting against the private property of the accused, which justifies the maintenance of the device and the possibility of directing it towards a public area, in fear of new acts vandalism

The defendant must be able to enjoy her constitutional rights (freedom of the person and the right to calm), as well as to personal tranquility in the

normal and orderly development of their lives, without being affected by behaviors

described.

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The claimant should be reminded that art. 7.1 CC, set one way

I express good faith as a rank of legal legal norm saying: "rights must

be exercised in accordance with the requirements of good faith.

The Judgment of the National Court of April 1, 2011, appeal 2223/2010, in its

Legal Foundation IV, last paragraph includes the following:

"The importance and significance of data protection regulations and the

relevance of the constitutional rights that are at stake, advise

that they do not put themselves at the service of particular quarrels that must be resolved in

different areas that should have relevance only in the domestic sphere that is

own and not an area such as jurisdiction. The seriousness involved in the exercise of

sanctioning power advises that mechanisms be put in place

corresponding administrative and jurisdictional procedures only when it is assumed that

produced a true violation of the fundamental right to data protection.

Such a circumstance does not occur in the present case.

IV

Based on the foregoing, it can be concluded that the denounced system conforms to the

current legality, reason why it is appropriate to order the FILE of this

process.

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, considering the system proportionate to the intended purpose.

2.- NOTIFY this Agreement to Ms. A.A.A. and INFORM the party plaintiff Doña 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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