

□ Procedure No.: PS/00148/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Don A.A.A. (hereinafter, the claimant) dated August 15, 2019

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 installation of a video surveillance camera
at the top of the door facing the common space, without informing the community of
owners.

Together with the claim, it provides documentary evidence (Annex I) that proves the
presence of the camera in question.

SECOND: In view of the facts denounced in the claim and the documents
data provided by the claimant, the Subdirector General for Data Inspection pro-
vided to carry out preliminary investigation actions for the clarification
of the facts in question, by virtue of the powers of investigation granted to the
control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation
General Data Protection, hereinafter RGPD), and in accordance with the provisions
ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed
that the data controller is the claimed party.

THIRD: On June 23, 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.

FOURTH: On 07/13/20 allegations are received from the accused party succinctly stating the following:

-the claim is unjustified because the camera is placed in the third plant in the background above my door and partially focusing on the two floors of face that they thank me for the deterrent protection of the camera.

This Lord's apartment located on the ground floor does not receive the slightest uptake ...nor the other lower floors. However, we have followed recommendations and redirected it to the corner of our door.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/5

-The placement is justified due to the robbery suffered in the apartment several years ago, reported to the Civil Guard.

-This Lord's claim is due to revenge for the installation of the elevator judicially obtained by having three disabled people (...).

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

First. On 08/15/19, this AEPD received a claim from the complainant, transferring as main fact the following:

“installation of a video-surveillance camera at the top of the door oriented towards common space, without informing the community of owners” (folio nº 1).

Second. The neighbor is identified as the main person responsible for the installation.

Don B.B.B., which yields various thefts in the property for the installation of the same for dissuasive reasons.

Third. It has been proven that the device is not operational, as it does not carry out treatment of any personal data.

Fourth. According to the defendant's statement, he has proceeded to reorient the same in order to avoid any inconvenience to the denouncing neighbor.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

In the present case, we proceed to examine the claim of date of entry into this AEPD 08/15/19 through which the following is transferred as the main event: tea:

“They are installing a video-surveillance camera at the top of the door oriented towards common space, without informing the community of owners”.

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").

C/ Jorge Juan, 6

28001 – Madrid

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.

So that a community of owners can install surveillance cameras in its common areas, it is necessary that said installation be agreed by the Board of owners, taking into account, for this, what is established in article 17 of the Law of Horizontal Property on the votes necessary for the approval of said agreement. do (favorable vote of three-fifths of the total number of owners who, in turn,

represent three-fifths of the participation quotas).

III

On 07/13/20, a response was received in this AEPD from the party denounced manifestly festing various "disagreements" with the complaining party, claiming to be responsible responsible for the installation of the device that is the subject of the complaint, for dissuasive reasons, ca-receiving the same operability.

Likewise, it states that it has reoriented it to avoid any type of "annoyance" to the denouncing neighbor, without it having been his intention to annoy him some with the same

For an administrative infraction to occur in the matter at hand pa, there must be a "data processing" duly proven by the Administration acting administration, an issue that has been clarified with the brief of allegations to the the device not be operational, fulfilling a merely dissuasive function.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/5

In a recent Judgment of the Supreme Court (STS 3505/2019, of November 7), it was has determined that no one has the obligation to endure a permanent uncertainty. about whether or not the camera is operational.

Therefore, it is recommended that in the future this type of device be installed felled in the private area, avoiding the intimidation of third parties or agreeing on the measure in the Board of owners, the community members being informed about it.

Property owners may agree to install cameras of the type described tas, complying with the regulations in force or obtaining free guidance in the

telephone numbers for Citizen Services of this Agency, briefly explaining the subject.

IV

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).

v

Based on the foregoing, it can be concluded that the reported device lacks operability, so it does not "process personal data" to date, which is why that it is appropriate to order the Archive of this administrative procedure.

The rest of the issues are not subject to the competence of this Agency, since being resolved in the Community of owners, in accordance with the regulations is specific in the matter (eg Horizontal Property Law).

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/5

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: ORDER the FILE of this procedure as there is no

accredited the commission of any administrative infraction in the framework of the protection of data.

SECOND: NOTIFY this resolution to Don B.B.B. and REPORT the result of the actions to the complainant Mr. A.A.A.

In accordance with the provisions of article 50 of the LOPDGDD, the

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 period of

month 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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es