

938-0419

Procedure No.: PS/00063/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: MONCADA CITY COUNCIL (*hereinafter, the claimant) dated

On September 18, 2018, he filed a claim with the Spanish Agency for

Data Protection, motivated by the treatment of data of members of the

State Security Forces and Bodies (images) proceeding to spread them with

“offensive” comments on your Social network pages without just cause.

The grounds on which the claim is based are alleged dissemination of images of

members of the State Security Forces and Bodies on their Network page

social, in the performance of their functions with “offensive” expressions towards them.

Provides various unclear screenshots (Exhibit Doc #1), without

to proceed to the interception of the device in question.

SECOND: On 11/06/18, the claim was TRANSFERRED to the party

denounced so that he proceeded to allege what he deemed appropriate about the "facts"

in question, appearing as notified in the computer system of this body.

THIRD: Consulted on 03/20/19, the database of this Agency does not contain

any allegation in this regard.

FOURTH: On May 28, 2019, the Director of the Spanish Agency for

Data Protection agreed to submit this

warning procedure PS/00063/2019. This agreement was notified to

denounced

FIFTH: The database of this Agency consulted on 07/08/19 does not contain that the defendant has made any allegation in this regard in relation to the "facts" transferred by this body.

PROVEN FACTS

First. On 09/18/18 a claim is received in this body through the which is transferred as the main fact the treatment of data of members of the State Security Forces and Bodies (images) by a neighbor of the locality proceeding to spread them with "offensive" comments on the pages of their Social network without just cause.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

Second. Ms. A.A.A. is identified as the main person in charge.

Third. The device of the accused was not intervened according to documentation submitted.

Fourth. Screen printing (documentary evidence) is provided by the Armed Forces and State Security Corps, where you can read along with the images uploaded the following expressions:

"You do not know more than dizzy, dogs ... SPREAD IT".

"Keep the faces of these three (...). They attacked a girl of 24 years and his brother (...)"

FIFTH. It is not possible to clearly identify public employees, given the low resolution of the photographs provided.

FOUNDATIONS OF LAW

Yo

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 transferred by the Moncada City Council (Moncada Local Police), informing the essence, the following "facts":

3/5

"...obtaining photographs of police officers acting in their police duties, to later spread it on social networks with offensive comments" (folio no. 1).

Article 6.1 of the RGPD establishes the assumptions that allow considering lawful processing of personal data.

It should be noted that there is no reason to compel a citizen to stop a recording of a fact verified on public roads by police officers.

Article 8, section 2, letter a) LO 1/1982, May 5, on Protection of Right to Honor, to personal and family privacy and to one's own image.

"In particular, the right to one's own image will not prevent:

a) Their collection, reproduction or publication by any means, when deals with persons who hold a public office or a profession of notoriety or public projection and the image is captured during an act public or in places open to the public.

The alleged commission of "irregularities" by the Security Forces and Bodies of the State, does not prevent individuals from transferring them to the Court of Instruction

closest, who will enter to assess them, without being able to be subject to particular diffusion with denigratory spirit by affecting their recognized rights constitutionally.

Article 18 EC guarantees the right to honour, as well as privacy personal and family, being the same extensible to the work developed by the members and State Security Forces, which, however, are subject to the relevant obligations when performing their duties.

The treatment of the personal data of the subjects object of criticism and information, since the use of your personal data, proportionally and justified by the end pursued and the freedom exercised, a essential instrument without which criticism or information would be meaningless and would be emptied of content.

The persons referred to in the submitted documentation are employees public, who exercised a function with public projection typical of their position, without it is stated that this will need a special secret and without having accredited the existence of any improper dissemination treatment, or incompatible with the rights defense, freedom of expression or information.

The data protection regulations make available to those affected several mechanisms for the resolution of issues related to the processing of your data personal. If you have doubts in this regard or wish to exercise your rights, you can, through the expressly provided contact channels, go directly to the responsible for the treatment, that is to say to the online platform.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

In this sense, it should be remembered that the "facts" described are accommodated in a specific area of sanctioning administrative law.

The art. 36.23 of Organic Law 4/2015, of March 30, on security protection citizen (LOPSC) typifies as serious infraction:

«The unauthorized use of images or personal or professional data of authorities or members of the Security Forces and Bodies that can put in endanger the personal or family safety of the agents, of the protected facilities or at risk the success of an operation, with respect to the fundamental right to information".

III

In the investigation phase, we proceed to analyze the photograph(s) provided by the complainant, without it being possible to determine that the image (personal data) allows identify any natural person.

Notwithstanding the foregoing, if offensive and injurious expressions are found against the actions of the State Security Forces and Bodies, which in his case could be subject to analysis in a timely court.

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.

5/5

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, after the analysis carried out on the documents provided

and the concurrent circumstances, it is not possible to determine the commission of the infraction

imputed administrative, reason for which the FILE of this document is ordered

procedure, without prejudice to the assessment of the facts in the judicial instances

due to the expressions and comments made by the accused.

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: PROCEED to decree the FILE of this procedure by not

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

SECOND: NOTIFY this resolution to Ms. A.A.A. and REPORT the result of the actions to the denouncing entity CITY COUNCIL OF MONCADA.

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

LOPDPGDD, 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

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es