

□ Procedure No.: PS/00203/2020

## 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 February 7, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against the one who identifies as B.B.B. with NIF \*\*\*NIF.1 (in

later, the claimed one). The grounds on which the claim is based are installation of

video surveillance camera that they believe is pointed at their property

intimidating them without just cause (folio nº 1).

Together with the claim, it provides documentary evidence that proves the presence of

the outer camera (Proof No. 1), although it cannot be specified that it

record the window or entrance of your home, by limiting yourself to presenting a photograph of a

outer camera.

SECOND. On 06/30/20, this Agency received a response from the respondent

succinctly alleging the following in relation to the facts:

“That he is the owner of the XXXX registry estate....of Puerto del Rosario, the vi-

Venda nº1 Upper Floor (which is located on the upper floor)...

The first thing that is clarified in this regard is that it does not have direct access to the street,

but on its front it adjoins the garden of farm No. 22 (that of the actors) and a passageway

llo common where they have their access.

Provide a copy of the informative poster informing that it is a video zone

monitored, as well as a photograph Ford license granted by the City Council of the

Puerto del Rosario.

THIRD: On October 8, 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 11/04/2020, this Agency received a letter of allegations from the reported stating the following:

“That the cameras do not record public areas or property of another person. The mentioned cameras record the front area of the house, which belongs to me...so that at all times the private area of the undersigned is being recorded.

...we want to record that the relationship with the neighbor on the ground floor is not is good and there are several legal disputes of different kinds.

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This party considers that the photographs, together with the attached drawing, may clarify determine the location of the cameras and to which places they are directed, being the property that belongs to me, the one that is being recorded at all times”

In addition to the photographs I enclose the closing project of my private area (...) and does not invade anyone's privacy”.

#### PROVEN FACTS

First. It is identified as the main person responsible for the installation of the cameras. ras Don B.B.B., which does not deny the facts.

Second. It has two cameras, although they are oriented towards the field of its private ownership, not affecting the transit area of the complainant and not obtaining

taking an image of its windows.

One of the cameras is oriented towards the parking area of your vehicle.

particular object, fearing damage to it, by an unknown third party, released

limiting the focus to the place where it is parked and what is necessary to identify

whoever approaches it.

Third. The system is provided with an informative poster placed on the exterior facade,

where the person responsible for the processing of personal data is indicated.

Fourth. Two convictions are provided by the accused party against the de-

complainant and his neighbor for Crime of damages (art. 263 CP) and Crime of Threats (art.

171.7 PC).

-Sentence of the First Instance Court and Instruction No. 4-- dated 01/30/20.

-AP Judgment (Sixth Section) Las Palmas de Gran Canarias dated

09/03/20.

## FOUNDATIONS OF LAW

Yo

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 02/07/20 is examined by me-

of which she manifests being affected by an installed camera that she considers affected

ta to his personal privacy without just cause (folio nº 1).

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The "facts" are concretized in the presence of a recording device that

According to the complainant, it is not well installed, being able, in her opinion, to "deal with cough of a personal nature", estimating that it records their private space.

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 must be oriented towards the particular space, without reach the spaces of the adjoining neighbors, or that control transit areas of them 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 intimated 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.

The camera can fulfill a dissuasive function for housing protection, while making sure not to obtain images from public/private third-party space without justified cause.

III

On the part of the defendant, this body is alleged in relation to the facts subject to denounces that the two installed cameras do not affect the privacy of third parties, since the same are oriented towards private space.

One of the cameras focuses on a private patio, attached photograph (doc. nº 3) where a patio is observed, with some stairs, without public space being visualized. public, limiting the angle to what is necessary to capture its private property.

The other camera focuses on the space where you park your private vehicle, stating that it is going to be fenced to delimit the space of its ownership, focusing on that space to avoid acts of vandalism to your vehicle.

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Therefore, there is no accredited obtaining of any image of space reserved to the complainant or her relatives, as the cameras were oriented towards her private property for security reasons.

The cameras are provided with the mandatory informative poster, being the responsible

The defendant himself, whose data is well known, is responsible for the treatment.

by the complainant, as evidenced by the fact of the complaint filed with this body.

organization with its data, considering that the poster is perfectly visible.

ble from the outside.

The mere viewing of the cameras does not imply obtaining private space.

tive of third parties, being the essential the orientation of these, an aspect that has been accredited is limited to private property of the accused.

It is recalled that the images obtained on alleged criminal acts,

are a means of accrediting the presumed material authorship of these, corresponding in

In any case, the free assessment of the same to the corresponding Court of Instruction.

For the party denounced, a copy of the Judgment-First Instance Court is provided.

Proof and Instruction No. 4-- dated 01/30/20 where Ms.

AAA, being the same sentenced for a Crime of Threats of art. 171.7 PC,

the decision being confirmed by a Sentence of the AP (Palmas de Gran Canarias) on date 09/03/20 (Roll No. 000047\*\*\*\*020).

The Provincial Court (Sixth Section) mentions the importance

evidence "of the video document that confirms his causation" (page 3, fecha 09/03/20).

The purpose that is pursued in the criminal process with the evidentiary activity, is

"form the intimate conviction of the Court about the existence or not of the punishable act and the participation of the author, with all its circumstances, as it happened in the historical reality prior to the process".

Based on the foregoing, it should be noted that the Constitutional Court (vgr.STC.

9.5.1994) admits that in the face of certain criminal phenomena that occur in

our environment it is possible to react and justify certain restrictions of the rights individuals when they collide with prevailing public and/or private interests.

otherwise we would find that the perpetrator of some acts reprehensible does not receive any punitive response.

The recordings of the video-surveillance cameras are valid evidence in the

criminal proceedings and have the nature of documentary evidence (art. 26 CP).

“For the purposes of this Code, a document is considered to be any material support that expresses or incorporates data, facts or narrations with probative effectiveness or any other type of legal relevance.

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The cameras installed make it possible to ensure that no new conducts contrary to law, fulfilling the function of preventing new "facts" not desired, as it is a means to record what happens in your case.

#### IV

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 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).

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In accordance with the foregoing, once the allegations put forward have been analyzed and the Given the evidence provided, it should be noted that there is no administrative violation some, as the cameras are oriented towards the private area of the accused, being justified the presence of the same, for the reasons stated, so it is appropriate order the File of this procedure.

The parties are reminded of the importance of the rights at stake, and must resolve their conflicts in the appropriate judicial instances or redirect their relationship tion to the minimum rules of good neighborliness required in these cases.

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Therefore, based on the foregoing,

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.

SECOND: NOTIFY this resolution to the defendant Mr. B.B.B. and INFO-MAR of the result of the actions to the complainant Mrs. 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

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

Sea Spain Marti

Director of the Spanish Data Protection Agency

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