

Procedure No.: PS/00099/2019

938-0319

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before Mr.

A.A.A., by virtue of a claim filed by Doña B.B.B. (hereinafter, the claimant) and based on the following:

### FACTS

FIRST: On October 31, 2018, the claimant filed a claim

before the Spanish Agency for Data Protection, motivated by the treatment of data made through cameras of a video surveillance system whose owner is the adjoining neighbor A.A.A. installed as stated by the affected party in \*\*\*ADDRESS.1.

The reasons on which the claim is based are "he placed a security camera at his window of his own free will that records everyone who passes through the gate and a piece of public road" (folio nº 1).

Along with the claim, provide documentary evidence (photographs) that proves the installation of some type of device with disproportionate orientation, not counting with informative poster about it.

SECOND: On 11/19/18 the claim was TRANSFERRED to the neighbor denounced, so that he could allege what he deems appropriate in law in relation to the transferred facts, specifically on the legality of the system in question.

THIRD: On 12/11/208 the transfer of the claim was reiterated, without any answer has been given by the accused party, recording in the system of this body, delivered to the Office on 12/21/18, after twice notification attempt that appears as "Absent" at the indicated address.

FOURTH: On March 4, 2019, 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 GDPR, in connection with article 12 GDPR, infringement typified in Article 83.5 of the RGPD and qualified (s) of Very serious and Mild respectively for prescription purposes in the new LOPDGDD (arts. 72.1<sup>a</sup>) and 74.1a).

FIFTH: On 03/22/19, this Agency received a written statement of allegations from the denounced party, stating succinctly the following:

"I want to state that having knowledge of the entrance to the premises, in where I live, from strangers (...) I installed a simulated security camera (...)"

"That consulted with the Administrator of the Community, he explained to me that should have no such device, apart from the neighbors, with whom

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I maintain certain discrepancies that are irrelevant, you can protest. In question (two days) I removed the camera in question, to avoid any kind of controversy with the neighbour (...)

For this reason and the neighbor having left, I did not answer the request carried out by that Agency, thinking that it was meaningless.

That we are interested in the File of the File without any sanction (...) the camera it only had dissuasive effects and once informed that the neighbor could consider that it was infringing its right, it proceeded to withdraw it in two days (...)"

SIXTH: On 05/03/19 the collaboration of the Municipal Police is required

(Málaga) in order to verify the facts.

SEVENTH: On 05/07/19 the collaboration of the National Police (Málaga) is required so that, by going to the scene of the events, they verify the installation of the cameras, as well as the alleged capture of public and/or private space of third parties, reporting as soon as possible to this Agency.

EIGHTH: On 06/18/19, this Agency received—Local Police Report

(Malaga) pointing out the following:

- That regarding the existence of a video-surveillance camera, externally no type of recording device is appreciated, an informative poster can be seen of Itesa security companies (photograph attached) on the facade of housing number 20.
- The owner informs us that in the past two vehicles were stolen from his property, installing a simulated camera as a deterrent.
- Checking by this Unit the outer perimeter of the same does not there is no video-surveillance device.

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 10/31/18, this body received a claim from the party complainant by means of which he transfers as the main fact "he placed a camera security at his window of his own free will that records everyone who passes by by the gate and a piece of public road" (folio nº 1).

SECOND: It is identified as the main person in charge Mr. A.A.A., who recognizes that you have installed a FALSE character device.

THIRD: There is documentary evidence of the "fictitious" nature of the camera in question, although it states that it has proceeded to withdraw it; not being installed any device to date.

FOURTH: There is no evidence that the system had an information poster in a visible area, informative effects of the data controller.

FIFTH: The cause/reason for its installation is not proven, although the defendant expresses "disagreements" with the complaining party, which does not proceed to explain, as well as that he has been the victim of "robbery".

SIXTH: It has not been possible to determine if the camera in question was oriented towards the public and/or third-party private space.

#### 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 arts. 47 and 48.1 of the LOPDPGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

In the present case, we proceed to examine the claim dated 10/31/18 by through which the following "facts" are transferred to this body.

The reasons on which the claim is based are "he placed a security camera at his window of his own free will that records everyone who passes through the gate and a piece of public road" (folio nº 1).

Along with the claim, provide documentary evidence (photographs) that proves the installation of some type of device with disproportionate orientation, not counting with informative poster about it.

The facts described may involve conduct contrary to the regulations in force in terms of data protection, as the person responsible for the system can be

Obtaining images of public roads and passers-by without just cause to

it.

Article 5 RGPD provides the following: "Personal data will be:

c) 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 can install video-surveillance cameras, but that they must be responsible that they comply with current regulations, avoiding the capture of public and/or private space of third parties without just cause.

On 03/22/19, this body received a written document from the defendant stating that it is a FALSE camera, which placed it on the basis of "disagreements" with the

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denouncing party, although it does not provide any document that corroborates the nature fictitious of it.

The installation of this type of device is not prohibited by our legal system, notwithstanding that its installation is carried out with the logical caution, avoiding situations that could be a "nuisance" for third parties who can be intimidated by these types of devices.

The accused part enters into contradiction, because on the one hand it speaks of entry of "strangers" into the premises where he resides, as a reason for the installation, and for another party manifests "disagreements" with the denouncing party, which does not seem to be alien

However, the foregoing states that "he proceeded to withdraw from the camera" and that I do not answer this body by "not considering it necessary".

Remember that not meeting the requirements of this body can be

considered as a serious administrative infraction by “not cooperating with the Authority of control” before the requirements made, being able to be valued such behavior to the time of the opening of an administrative sanctioning procedure with a fine pecuniary

### III

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 that, in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TCo Auto 3-12-81).

According to what has been argued, it can be concluded that the device denounced was of simulated character, that is, it does not "process personal data", which is why the transferred conduct does not deserve any reproach from the point of view of the Law sanctioning administrative.

The foregoing does not prevent, that in the face of behaviors such as those described, take action in other judicial channels (vgr, civil) considering that with this type of devices can create legally reprehensible damage, given the fact of being intimidated by such devices without just cause, which

It is brought to your attention for the appropriate legal purposes.

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 the commission of any administrative infraction must be accredited.

SECOND: NOTIFY this resolution to Don A.A.A. and REPORT the result of the actions to the denouncing party -Doña B.B.B..

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.

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Director of the Spanish Data Protection Agency

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