

□ Procedure No.: PS/00472/2019

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 21, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against IL SOFA DE MURCIA SOCIEDAD LIMITADA with NIF

B73743965 (hereinafter, the claimed one). The grounds on which the claim is based are

“Installation of a camera without an information poster” indicating that it is

a video-monitored area.

Along with the claim, provide documentary evidence that proves the installation of

a webcam-cam located high up that allows you to record the interior of the establishment.

(doc. no. 1-4)

SECOND: On January 16, 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 12 of the RGPD, typified in Article 83.5 of the RGPD.

THIRD: On 02/26/20, collaboration is requested from the Security Forces and Corps

State Security so that those displaced to the scene of the events, verify the

presence of the device in question, without any pronouncement having been

made for the purpose.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

First. On 08/21/19, a claim is received at this Agency through the which denounces the installation of a video-surveillance device "without counting" on the Mandatory informative poster in visible area.

Second. The installation of the device in the establishment is accredited commercial Il Sofa de Murcia Limited company.

Third. The establishment does not have the mandatory information poster indicating that It is a video-monitored area.

Fourth. There is no informative form (s) available to the client (a) that may require it if deemed appropriate.

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Fifth. The Initiation Agreement of this procedure has been notified by means telematics on 01/17/2020.

Sixth. The database of this organization consulted on 02/24/20 does not contain any allegation in this regard.

Seventh. It has not been possible to prove that the device in question was operational, so that it is not possible to prove that it processes personal data.

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.

In the present case, the claim dated 08/21/19 is examined by me-

gave from which the following is transferred:

“Installation of a camera inside the establishment without having a sign

informative indicating that it is a video-surveillance zone” (folio nº 1).

Documentary evidence is provided that accredits the installation of the camera, as well as

such as the absence of the mandatory information poster in a visible area, indicating that

It is a video-monitored area (Annex I. Doc. No. 1-4).

Article 12 RGPD provides the following: “The data controller takes

will take the appropriate measures to provide the interested party with all the information indicated in the

articles 13 and 14, as well as any communication under articles 15 to 22

and 34 related to treatment, in a concise, transparent, intelligible and easily accessible form.

so, with clear and simple language, in particular any information directed specifically

exactly a child. The information will be provided in writing or by other means, including

including, if applicable, by electronic means. When requested by the interested party, the information

Information may be provided verbally as long as the identity of the interested party is proven.

sado by other means”.

It should be remembered that individuals are responsible for ensuring that the systems

most installed comply with current legislation.

The installation of this type of device must have the mandatory sign

informative, indicating the purposes and responsible for the treatment in your case of the data

of a personal nature.

Article 22 LOPDGG (LO 3/2018, December 5) provides the following:

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"The duty of information provided for in article 12 of the Regulation (EU)

2016/679 will be understood to be fulfilled by placing an informative device

in a sufficiently visible place identifying, at least, the existence of the treatment,

the identity of the person in charge and the possibility of exercising the rights provided for in the

Articles 15 to 22 of Regulation (EU) 2016/679.

A connection code or

Internet address to this information. In any case, the data controller

must keep available to those affected the information referred to in the ci-

all regulations".

The establishment must also have an informative form(s) available

position of customers who may require it, in order to exercise their rights in the

framework of the regulations in force.

III

According to the evidence that was transferred to this Agency, there were

indications to think that the owner of the property had a web cam in the

establishment that ran, although it has not been possible to determine the operability of

the same or if it was a punctual behavior.

The burden of proof corresponds in this case to the acting Administration,

It has not been possible to determine the facts that are included in the Complaint presented.

ted in this organism.

The principle of presumption of innocence prevents imputing an administrative infraction

tive when proof of charge accrediting the

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 in the manner more 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 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.

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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

Based on the foregoing, it is not possible to specify that the reported device was operational at the time of the events, which is why it is appropriate to order the File of this procedure.

It is recommended that the accused party observe the guidelines set forth in the this resolution, in such a way that in case of using a web cam as a measure dissuasive in the establishment that irrigates, the clientele is informed of the operation of the same in the terms set forth in the content of this resolution.

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.

SECOND: NOTIFY this resolution to IL SOFA DE MURCIA SOCIEDAD

LIMITADA 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

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