

□ Procedure No.: PS/00125/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Mr. A.A.A. (*hereinafter, the claimant) filed on 12/18/19
claim before the Spanish Data Protection Agency. The claim is
directs against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one).

The reasons on which the claim is based are the installation of a video camera-
Surveillance with presumed orientation towards public space without just cause.

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 02/21/20 the Complainant filed an Appeal for reconsideration
stating that the camera that is the subject of the complaint is operational, installed in a
terrace facing public road, not having the permission of the Community of

owners for the installation of the same, being ESTIMATED the same in date

03/31/20.

FOURTH. On June 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 5.1.c) of the RGPD, typified in Article 83.5 of the

GDPR.

FIFTH. On 07/22/20, a request for a copy of the File was received from the

complainant, being transferred in a timely manner by this Agency on the date

07/29/20.

SIXTH: On 08/03/20, this Agency received a written statement of allegations from the

defendant stating the following:

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"Without prejudice to what is stated in the previous section, and even though we are almost unaware

in all of why exactly a sanctioning procedure is initiated against me

person, I have to expose from the first moment, that the only camera that I

I have installed in my home, it is effectively located on the terrace of my

property, but exclusively for capturing images inside my

housing, with exclusively personal and/or domestic treatment, and without, in any way

any, the camera captures images of the outside (at least voluntarily or

aware).

It is accompanied by two illustrative photos of the two places where to date I have

had the camera installed, as DOC.1 the previous location and as DOCS. 2 the

current location, and two other photos also illustrative of the vision, respectively, from both locations (exclusively inside both locations), such as DOC. 3 and Doc. Four.

If ever, punctually and hypothetically, the camera has been able to capture some image of the exterior, of course I do not know, but, surely, that I can confirm that it was in the absence of any knowledge and will.

What this part particularly calls his attention is that the neighbor denouncer, has never transferred to the undersigned any notice, opinion, requirement, or any claim before formalizing your complaint, when not only has had for it the directly personal cause (we live in the same building), but also through the administration of farms or presidency of the Community of Owners.

That even, in the agreement to initiate the sanctioning procedure, applying the principle of proportionality, exclusively a sanction of WARNING, I understand, with all due respect, that not even that hypothetical minimum penalty applies.

I REQUEST, That this pleadings brief be considered submitted so that in accordance with the above, the present procedure is archived or terminated sanctioning without any imposition against this party, and subsidiarily, the nullity of the file for the reasons also stated (...)"

SEVENTH: On 08/14/20 a new brief of allegations is received from the party reported, stating the following:

"In the documentation that is delivered to me by mail dated 08/07/2020, only what is stated in point c) is delivered to me and only partially requested in section a), but none of the documents required in section b).

In the letter in which the documentation is transferred to us, a generic invocation of the possibility of not delivering certain documentation, in No one specifies or adequately motivates the exact reason that it does not I have been given the documentation referenced in section b) above.

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We are facing a sanctioning procedure where the right to defense must be guaranteed, by clear constitutional mandate and without the alleged denial of access to certain documentation can be made on the basis of assertions or generic formulas that are not satisfied with the express duty of motivation. Therefore, this party cannot withdraw the request for annulment to date due to defenselessness that I exposed in our pleadings brief.

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 12/18/19, a claim was received from the complainant through the which translates as the main fact the following:

“Installation of a video-surveillance camera that is recording the street” (folio no. 1).

Second. It is identified as the main responsible Mr. B.B.B.

Third. The presence of a video-surveillance device in the bal- with orientation towards public space, although it has not been proven that it obtain image of any public space.

The defendant states that they have had two locations, one previous and current, providing Doc. No. 3 and 4 to support their allegations.

Fourth. Costa accredited the installation of a camera on the exterior terrace of the complainant, albeit towards its own private space, for reasons of "control of their pets" tas".

FOUNDATIONS OF LAW

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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

Before going into the substance of the matter, it is worth analyzing the request for NULLITY of the complainant alleging defenselessness when exercising his right to defense.

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It should be noted that the facts were specified in a clear and indubitable manner in the Start Agreement dated 05/03/20, as reproduced below.

“Installation of a video-surveillance camera with presumed orientation towards space public service without just cause” (folio nº1).

The evidence provided by the complainant proves the installation of the camera in the house owned by the defendant, not being denied the facts by the same, which acknowledges being responsible for its installation.

Article 62.1 of Law 39/2015 (October 1) provides the following:

“Denunciation is understood as the act by which any person, in compliance with compliance or not of a legal obligation, informs an administrative body of the existence of a certain fact that could justify the initiation of ex officio of an administrative procedure.

In such a way that bad faith is not appreciated in the filing of the Preliminary Complaint.

sitting, as there is a camera in a window with presumed orientation towards space public, being easily visible from the outside and without any measure to dissipate mulate it has been adopted by the accused.

The Supreme Court has determined that not only direct evidence can power presumption of innocence, but it can also be done by means of indirect evidence, being unquestionable in the present case the presence of the installed camera, as well as its orientation towards a public transit area, without the presence of an informative sign.

The accused has had access to all the documentation of the administrative file. administrative for the purposes of exercising their right to defense (art. 24 CE), without affecting any right to the presumption of innocence has occurred, which is why

It is appropriate to reject your request for annulment of the Initiation Agreement, this procedure. I lie.

III

In the present case, the claim dated 12/18/19 is examined by me- of which the following facts are reported to this Agency:

“Installation of a video-surveillance camera with presumed orientation towards public space without just cause” (folio nº1).

Known facts could constitute an infringement, attributable to the claimant. mado, for violation of art. 5.1 c) GDPR.

“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

fulfilled comply with current legislation, proving that it complies with all

the requirements demanded by the regulations in force.

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

ive, 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.

IV

On date (s) 08/03/20 and 08/14/20, briefs of allegations are received from the defendant, the which acknowledges being responsible for the installation of a single camera in the window of his outdoor terrace, so as he says "to be able to control his pets".

"The undersigned has two pets (dogs) that are usually left alone- mind on the aforementioned terrace of my home for a few hours, every time I I and/or my partner are away for work or leisure, for which I decided in its time the installation of a camera that would allow me the vision of my referrals pets and ensure their safety and well-being through a convenient application in our mobile phone in real time, of which there has never been a recording some".

Along with his allegations, he provides documentary evidence (Doc. No. 3 and 4) that confirms Edit the current orientation of the camera towards the interior terrace area of your property. dad.

In the images provided, only the interior of the terrace can be seen (area where domestic), proceeding to change the location of the device, offering to the check it if necessary.

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

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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).

There are ways to install the device in question, which allow conjugating the interests at stake, on the one hand, the control of the pets and on the other hand, the right to privacy of third parties, who do not have to feel "uncomfortable" with the camera presence.

Recently, the Supreme Court (STS, Civil Chamber, section 1, of 7 November 2019, no. 600/2019, rec. 5187/2017, EDJ 2019/724119) has warned about about the misplacement of video-surveillance devices, towards third-party areas, that create a situation of permanent observation even in the case of devices you simulated

This body takes into account the collaboration of the accused, as well as the change of location made on the reported device, considering it unnecessary

carrying out the requested testimonial test, as it is accredited that the control was limited to the interior area of the terrace and that there has been no negligence in the installation initial felling of the device in question.

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According to the above, it can be concluded that the device denounced has not been oriented towards public space without just cause, although from the outside could create the false appearance of control of the public sidewalk; therefore remember gives the Archive of the procedure as no administrative infraction was found in in relation to the facts subject to transfer to this Agency.

Therefore, based on the foregoing,

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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 Don B.B.B. and REPORT the result of the actions to Don 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

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