

Procedure No.: PS/00372/2018

RESOLUTION OF PUNISHMENT PROCEDURE

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

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

BACKGROUND

FIRST: The claim filed by the claimant has an entry dated 1

August 2018 at the Spanish Data Protection Agency.

The claim is directed against A.A.A. with NIF ***NIF.1 (hereinafter, the claimed).

The reasons on which the claim is based are those set forth in his writing of the following mode:

““On July 10, 2018, I realized that behind the window (inside the housing) there is a video-camera supported on a side table focusing on the stretch of stairs, towards my house, but it is also possible that it approaches the landing of the entrance of this first dwelling” (folio nº 1).

Along with the claim, provide photographic evidence that proves the installation of some type of device, without being able to specify exactly the orientation of the himself, although he suspects "that it may be oriented towards the area of the stairs" (folio no. 1).

SECOND: In view of the known data, the Subdirectorate General for Inspection of Data proceeded to carry out preliminary investigation actions for the clarification of the facts in question, in accordance with the power recognized in art. 58.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 regarding the protection of natural persons in what regarding the processing of personal data and the free circulation of these data and

which repeals Directive 95/46/EC (General Data Protection Regulation)

(hereinafter GDPR).

There are unclarified indications of the installation of some type of device by the denounced party, without being able to specify its orientation, beyond the suspicions of the denouncing party that "could capture the part of access to your living place".

THIRD: On December 3, 2018, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of article 5 of the RGPD in connection with article 6 of the aforementioned normative text.

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2/7

FOURTH: On 01/28/2019, this body receives written allegations of the denounced party by means of which he states the following:

“Denial of the facts contained in the claim that brings cause of this sanctioning procedure.

This party in the brief filed on 11/06/18 already duly informed of contracting with the Company SECURITAS Direct-Spain—the installation of video-surveillance cameras, as well as all the documentation required by this organism, among which were each and every one of the existing chambers at my home (...), none of which was proven in Doc. No. 4 to 9 that I attached to my writing, they captured images that were not from the interior of my living place.

With this I deny the existence of more video-surveillance cameras in my address, nor in any other area of the property located at ***ADDRESS.1, which is ownership in all its apartments of this undersigned and her husband, who have been seen obliged to file the corresponding demand for eviction in the Courts of ***LOCATION.1, as evidenced by the Decree admitting the aforementioned Lawsuit dated April 17, 2018, attached as Document No. 2.

In addition, this party wishes to state that the claimant is not the holder or owner of the dwelling located on the second floor of the property located at ***ADDRESS.1, but rather occupies it precariously (...).

Again, since it was already requested with the document that this party sent to this agency on 11/06/18, it is requested that the photographs be sent to me provided by the claimant to be able to know this undersigned what assumption device was facing the window of my home (...)

No commission of any offense established in the RGPD. It is therefore, that this part does NOT deny the existence of video cameras inside my home, but in the places and capturing images of the interior areas of it, as already

It has been proven in a previous letter addressed to this body (...)

...the cameras installed are towards interior areas of my home, and (...)

This part as implicitly required in the Initiation Agreement sanction file, wants to refer to the fact that the claimant files the claim that brings cause of this procedure as retaliation to this party in

Therefore, there are the following non-final Judgments:

-Sentence of January 18, 2018, Investigating Court No. 2

(***LOCATION.1)...

-Sentence September 11, 2018, Investigating Court No. 4

(***LOCATION.1) on minor crimes nº 2181/2018...

-Sentence January 14, 2019, Investigating Court No. 3

(***LOCATION.1) relapse in the immediate trial procedure on minor crimes No.

XXXX/2017 (...), which is provided as Document No. 13.

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3/7

Wanting this part to emphasize that, despite all this, this part has not

installed no camera that focuses on the areas of the staircase, but within its

home, so that even if it is, you can sleep peacefully at night.

Without further ado, this part remains at your total disposal for any

doubt/clarification, especially if it is deemed necessary to prove that this part has NOT

committed no infraction (...)."

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: On 08/01/18 a claim is received by this body from the

complainant Doña B.B.B., through which she transfers the following:

"On July 10, 2018, I realized that behind the window (inside the

housing) there is a video-camera supported on a side table focusing on the stretch of

stairs, towards my house, but it is also possible that it approaches the landing of the

entrance of this first dwelling" (folio nº 1).

Provides various photographs in which the presence of a device is observed

seen through a window (photographic documentary evidence).

SECOND: It is accredited that the person in charge of the installation is the mother of the

complainant Mrs. A.A.A., who acknowledges having contracted a security system with the private security company Securitas Direct Spain.

THIRD: The system has the mandatory information poster at the entrance door to the property informed that it is a video-monitored area (documentary evidence no. 1 and 2).

FOURTH: The reason for the installation is the relationship of conflict with the party 10-13 various pronouncements complainant, providing documentary evidence lawsuits for minor crime of injuries.

FIFTH: The contracting of the system with the security company is accredited Securitas Direct Spain (Documentary Exhibit No. 3).

SIXTH: It is accredited that the ownership of the property and of all the floors of the same, belong to the accused party and her husband, providing a registration deed that corroborates such point.

SEVENTH: The cameras installed obtain images of the interior of the home of the denounced (Doc. 4,5,6,7,8 and 9).

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4/7

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 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 resolve this procedure.

II

The defendant is imputed the commission of an infraction for violation of article 5 of the RGPD, which states that: "Personal data will be treated:" adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

Article 6.1 of the RGPD (Legality of the treatment) establishes the assumptions specific conditions under which the processing of personal data is considered lawful. the interested.

Article 4 section 1 of Instruction 1/2006 (AEPD) provides the following:

"In accordance with article 4 of Organic Law 15/1999 of 13 December, Protection of Personal Data, the images will only be treated when they are adequate, pertinent and not excessive in relation to the scope and the specific, legitimate and explicit purposes that have justified the installation of cameras or video cameras".

Cameras installed by individuals cannot affect, without cause justified, to the right to privacy of third parties, who may be intimidated by these types of devices.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation with what is stated in Considering 148, provided that the commission of an infringement of the provisions of the new RGPD.

III

In the present case, we proceed to examine the claim of date of entry into this body 08/01/18 by means of which the Complainant transfers the following

facts:

“On July 10, 2018, I realized that behind the window (inside the housing) there is a video-camera supported on a side table focusing on the stretch of stairs, towards my house, but it is also possible that it approaches the landing of the entrance of this first dwelling” (folio nº 1).

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5/7

Therefore, the facts are specified in the suspicion of the party complainant of installation of some type of device, which could be controlling the staircase where you access from the street to your home.

The accused party does not deny the imputed "facts", although it alleges that the installed cameras, for reasons of personal security, do not obtain images of common areas, but all the images are of the "interior of the house".

It should be remembered that individuals can either by themselves or through of a security company to install video-surveillance cameras with the purpose of protect the property, its belongings and its inhabitants.

There is a bad relationship between the parties, as reflected in the various judicial pronouncements, with a sentence to the crime of minor injuries and the adoption of distancing measures between them. (Proof documents nº 10, 11, 12 and 13).

All this justifies the presence of video-surveillance cameras, which can obtain and prevent the realization of new acts of violence, anyone who outside its nature, between the parties.

It should be noted that in cases such as the one exposed, where the parties have reached to physical violence, the presence of cameras is justified even in common areas, considering that in the collision of rights, these can play a role major preventive, against any type of verbal or physical aggression, especially when the parties have shown that they cannot develop a civilized coexistence.

After analyzing the images provided by the accused party, the same obtain images of the interior of their home, that is, the private area where The defendant and her husband (parents of the complainant) develop their daily lives. The claimant is also not clear that the device she has observed, which is object of complaint is a video-surveillance camera (Document No. 1), either that although he affirms it, the only thing he observes is a device that he suspects it is of a video camera.

The accused party recognizes the device, which has been provided by the private security company Securitas Direct Spain, as a device included within the video-surveillance system, but which is not technically equipped for the Obtaining images associated with an identified or identifiable natural person.

The accused party even alleges before a rational and well-founded fear of "aggressions" that the senior protection program has contracted, which allows contacting with the security company if necessary.

IV

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

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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.

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).

According to the above, the reported device is not a video camera.

surveillance, but is part of the system with a different purpose, not "trying to data of the complainant" or of any companion of the same.

Therefore, since there is no "data processing" one cannot speak of an infringement administrative, the presence of the cameras being justified for reasons of security.

The documents provided denote a "poor relationship" between the parties involved. are forced to coexist in the same building, although on different floors, but sharing a single common input.

The advanced age of the parents as well as the circumstances of the case concrete, they justify the presence of the cameras, especially if there has been, as they prove the proven facts of the judicial sentences provided physical aggressions and verbal.

This set of circumstances would justify, in the opinion of this body, including the installation of a camera in the landing area, near the entrance of the main residence of the defendants, although it is not possible to control the area of

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7/7

staircase, nor the access space to the complainant's home, which may enter/exit freely.

Finally, it is recommendable, as long as the Courts of Justice decide on the rights in conflict, that the parties adapt their behavior to the minimum rules of coexistence, avoiding any type of confrontation that is difficult

prediction.

Therefore, in accordance with the applicable legislation and assessing the facts
accredited exposed,

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 within the framework of the
Personal data protection.

SECOND: NOTIFY this resolution to Ms. A.A.A. and, according to art. 77.2
of the RGPD, INFORM the complaining party about the result of the claim.

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. 114.1 c) of
the LPACAP, 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

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