

□ File No.: EXP202100273

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the complaining party) dated July 2, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against ***COMUNIDAD.1 with NIF ***NIF.1 (hereinafter, the part
claimed). The grounds on which the claim is based are as follows:

"Installation of security cameras in the Community of owners without counting
with the due authorization of the group of owners" (folio nº 1).

Provide documentary evidence (Annex I) that proves the presence of the device,
as well as the information poster in the access area to the property.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), said claim was transferred to the claimed party in fe-
date 07/08/21, to proceed with its analysis and inform this Agency on the
period of one month, of the actions carried out to adapt to the foreseen requirements
cough in the data protection regulations.

No response has been received to this letter, nor any clarification regarding the
installed system.

THIRD: On September 13, 2021, the Director of the Spanish Agency

of Data Protection agreed to admit for processing the claim presented by the party
claimant.

FOURTH: On December 9, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: The database of this Agency consulted on 01/04/2021 has not been received any response, nor explanation about the reasons for the installation have been done.

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

In this proceeding, the following are considered proven facts:

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FACTS

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First. The facts bring cause of the claim dated 07/02/21 through the which translates as the main fact the following:

"Installation of security cameras in the Community of owners without counting with the due authorization of the group of owners" (folio nº 1).

Provide documentary evidence (Annex I) that proves the presence of the device, as well as the information poster in the access area to the property.

Second. The entity Community of Owners *** COMMUNITY.1.

Third. The presence of the camera in the entrance area to the property is accredited. ble, along with an information sign indicating that it is a video-monitored area.

Fourth. Minutes of the owners' meeting reporting the installation have not been provided of the system, as well as the quorum necessary for the installation of this type of device.

video-surveillance assets.

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 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 resolve this procedure.

II

Before going into the substance of the matter, in the Initiation Agreement of this organization of date 12/09/21 she was already informed about the consequences of not making any allegation to it, "being able to be considered the same as a resolution proposal" (art. 64.2 letter f) Law 39/2015, October 1).

The agreement to initiate the sanctioning file determined the facts in which the specified the imputation, the infraction of the RGPD attributed to the claimed one and the sanction that could be imposed. For this reason, taking into consideration that the claimed party did not has formulated allegations to the agreement to initiate the file and in attention to the established in article 64.2.f) of the LPACAP, the aforementioned start-up agreement is considered in this case proposed resolution.

In the present case, the claim dated 07/02/21 is examined by me-
from which the following fact is transferred "installation of security cameras in

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Community of owners without the proper authorization of the group of

owners" (folio nº 1).

Article 6.1 of the RGPD establishes the assumptions that allow the treatment to be considered lawful.

processing of personal data.

1. The treatment will only be lawful if at least one of the following conditions is fulfilled:

ditions:

c) the treatment is necessary for the fulfillment of a legal obligation

applicable to the data controller (...).

An agreement of the Homeowners Meeting is necessary for the installation of the cameras

of video surveillance, in addition this agreement must be reflected in the minutes of said

meeting.

When installing security cameras in neighboring communities, it is necessary

It is necessary that the Community of Neighbors has the favorable vote of 3/5 parts

of all the owners who in turn represent 3/5 of the shares

participation fees as developed in article 17.1 of the Horizontal Property Law.

zontal.

Regarding the location of the security cameras inside the farm, the co-

community of owners can install exterior surveillance cameras in the areas

of the building, understanding by such the garages, storage rooms, portals and gardens, and

even elevators, as long as no approach to the interior of the dwellings (es-

private spaces) or to the street (public spaces).

The neighbors of the property must be informed of the presence of the cameras.

maras, adopting a minimum protocol of access to the images in case of being

necessary, remembering the restrictive nature of access to them.

III

In accordance with the ample "evidence" available in this pro-

sanctioning procedure, it is considered that the claimed party has proceeded to the

installation of a video-surveillance camera system without the proper

informed authorization of the rest of the owners of the property.

Regardless of the obligations of the President of the Community of

owners, whose alleged willful / negligent action we remember is subject to

responsibility, the Community must ensure that the installed system conforms

to current legislation, without prejudice to falling on the figure of the main

representative, the consequences of an action that causes damages to

the same.

The known facts constitute an infraction, attributable to the party

claimed, for violation of the content of art. 6 GDPR.

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Article 83.5 RGPD provides the following:

IV

“The infractions of the following dispositions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of EUR 20,000,000 or, treating-

of a company, of an amount equivalent to a maximum of 4% of the volume of

Total annual global business of the previous financial year, opting for the one with the highest

amount:

a)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

When motivating the sanction, the following is taken into account:

-the nature of the infraction by having a video-surveillance system that is oriented towards a transit zone, without the legal backing of the Community of owners, which has not been informed about it (art. 83.5 a) RGPD).

-the intentionality or negligence of the infringement, (art. 83.2 b) RGPD), since with the video-surveillance system performs excessive control of transit area without cause any justified.

For all this, a sanction is agreed in the amount of €1,500 (one thousand five hundred euros), by having a camera system that excessively records an area of a community without due legal support for this purpose, a sanction located on the lower scale prior of this type of infractions and according to the nature of the facts described

v

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) it is established that each control authority may “order the person in charge or of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE ***COMUNIDAD.1, with NIF ****NIF.1, for an infraction of the Article 6 of the RGPD, typified in Article 83.5 of the RGPD, a fine of €1,500 (one thousand five hundred euros).

SECOND: ORDER the claimed party so that within ONE MONTH from the notification of this act, proceed in accordance with article 58.2 d) RGPD to adopt the following measures:

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Accredit the informed consent of all the owners of the Community.

community of owners, providing the corresponding Minutes in legal form or

gives to the removal of the system from the current place of installation proving such extreme

before this body.

THIRD: NOTIFY this resolution to ***COMMUNITY.1.

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co-

of the Public Administrations (hereinafter LPACAP), within the term of payment

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened in the name of the Spanish Agency

Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of

Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

will be until the 20th day of the following month or immediately after, and if

is between the 16th and last day of each month, both inclusive, the term of the payment

It will be valid until the 5th of the second following month or immediately after.

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

resorts 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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the interested party

do states its intention to file a contentious-administrative appeal. If it is-

In this case, the interested party must formally communicate this fact in writing

addressed to the Spanish Agency for Data Protection, presenting it through the Re-

Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

through any of the other registers provided for in art. 16.4 of the aforementioned Law

39/2015, of October 1. You must also transfer to the Agency the documentation

that proves the effective filing of the contentious-administrative appeal. If the

Agency was not aware of the filing of the contentious-administrative appeal

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tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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