

□ File No.: EXP202204036

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (*hereinafter, the complaining party) dated July 6, 2021 in-
filed a claim with the Spanish Data Protection Agency. the claim
is directed against COMMUNITY OF OWNERS R.R.R. with NIF ***NIF.1 (hereinafter
before, the party claimed/). The grounds on which the claim is based are as follows:
“installation of a video surveillance system that incorporates a reading system
number of vehicle registrations in areas of access to the Urbanization where it is located
this Community, without having the proper administrative authorizations for the
taking pictures in an area that constitutes a public domain space,
on which there is a right of way” (folio nº 1).
Provides images and Resolution of the CITY COUNCIL OF IRÚN on the road
affected (Documentary Annex I).

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.

THIRD: On August 9, 2021, in accordance with article 65 of the
LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On 12/01/21, the Initiation Agreement associated with the PS/

00410/2021 being the same notified in a timely manner to the claimed party as
as recorded in the system of this Agency.

FIFTH: On 12/27/21 a letter is received from the entity claimed stating
“error” in the identified parts attributable to this body, admitting the allegations
tions by revoking the initial Start Agreement dated 12/01/21 and ordering
taking the necessary actions to clarify the facts described, which
will be carried out within the framework of the current PS/00162/2022 as the pres-
description of the offenses described.

SIXTH: On April 4, 2022, the Director of the Spanish Agency for Protection
tion of Data agreed to initiate a sanctioning procedure against the claimed party, with
glo to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-
Common Administrative Procedure of Public Administrations (hereinafter, LPA-
CAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article
83.5 of the GDPR.

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SEVENTH: On 04/28/22, a reply is received from the respondent
stating the following:

“In the first place, it is assumed that the road is owned by
public, when it is a road of private ownership of the community located, in the
Jaizkibel urbanization.

Secondly, the informative posters indicate the purposes and responsible for the
treatment and have the indications referred to in the Initiation Agreement.

The justification and reason for the installation of the video-surveillance system with cameras is to guarantee security, given the increase in robberies and incidents in the homes, having followed the indications and recommendations of the Ertzaintza to your installation.

Finally, the installation has municipal authorization. Community applied to the Hondarribia City Council for a minor work permit for the execution of an access control facility, and three months after the request without having obtained a resolution, the authorization must be understood to have been granted by administrative silence.

The FFCC are duly informed of the installation of the video-surveillance, having requested on several occasions images from the Community to proper investigation of different events. It is attached as Document No. 6 application document and document (...) as Document No. 7 (...)"

EIGHTH: On 06/06/22, a "Resolution proposal" is issued, in which it is considered It would be wise to propose the Archive of the present proceedings, since it is not accredited do the infringement of the current regulations on data protection, being the same notified in a timely manner as evidenced in the computer system of this organism.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

First. The facts bring cause of the claim dated 07/06/21 through the which translates as the main fact the following:

"installation of a video surveillance system that incorporates a reading system number of vehicle registrations in areas of access to the Urbanization where it is located this Community, without having the proper administrative authorizations for the

taking pictures in an area that constitutes a public domain space,

on which there is a right of way” (folio nº 1).

Second. The entity - COMMUNITY OF

OWNERS R.R.R.—who alleges security reasons for the installation of the system

theme.

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Third. The private nature of the land where it has been established is accredited

a control system for video-surveillance purposes, being the obligation of the claimed

its use and conservation.

“Otherwise, to the extent that the Irún PGOU of 1994 qualifies the urbanization

tion of a private nature, there is no support whatsoever for the claim that the ele-

litigation urbanization processes are assumed by the Irún City Council” (point

41 Judgment number 72/2022 No. 2).

Fourth. The presence of informative posters indicating that it is

of a video-monitored area, indicating the data controller.

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FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-

General Data Protection Regulation, hereinafter RGPD), grants each authori-

control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The formal procedures
ted by the Spanish Agency for Data Protection will be governed by the provisions of
Regulation (EU) 2016/679, in this organic law, by the regulatory provisions
dictated in its development and, as long as they do not contradict them, with a sub-
sidiario, by the general rules on administrative procedures."

II

In the present case, the claim dated 07/06/21 is examined by me-
dio from which the presence of a video-surveillance system "with reader of
number plates" in a public area without legal authorization from the City Council
corresponding to it.

The art. 5.1 c) RGPD provides the following: The personal data will be:
"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
felled 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.
tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each
personal character.

In any case, the cameras must be oriented towards the particular space, avoiding intimidate neighboring neighbors with this type of device, as well as control areas transit of the same 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 intimidated 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.

III

Examined the allegations of the claimed party in which it manifests the character of the access road to the Jaizkibel Urbanization, providing two sentences firm (Doc. No. 1 and 2) of the TSJ of the Basque Country dated 02/14/20), it should be noted that the installation of the video-surveillance system is a matter to be determined by the group of owners of the same, such aspect being reflected in its case in the Minutes correspondent.

Therefore, an agreement from the Homeowners' Meeting is necessary for the installation. tion of the video surveillance cameras, in addition this agreement must be reflected in the minutes of said meeting.

When installing security cameras in neighboring communities, it is necessary that the Community of Neighbors has the favorable vote of 3/5 of the total ownership of the owners who in turn represent 3/5 of the share quotas. cipation as developed in article 17 of the Horizontal Property Law (LPH).

On this last aspect, this body is not a reviewer of pronouncements.

judicial proceedings, although the contribution of the aforementioned pronouncements is admitted used as a means of proof when proving the nature of the land where the imaging devices have been installed.

“Otherwise, to the extent that the Irún PGOU of 1994 qualifies the urbanization tion of a private nature, there is no support whatsoever for the claim that the ele- litigation urbanization processes are assumed by the Irún City Council” (point 41 Judgment number 72/2022 No. 2).

The presence of an informative poster(s) indicating in the access that it is a video-monitored area, being the treatment of data of ca-

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minimum and necessary character for the main control of access to the Community of pro- owners, which justifies its purpose in accordance with the law.

Documentary evidence is attached that accredits the presence of the same to poster mode in the vicinity of the video-monitored area (Annex I).

Likewise, after analyzing the allegations of the defendant, the system is subject to knowledge by the local Security Forces and Corps, which a priori they have not manifested any "irregularity" to this body.

Nor has it been possible to prove an unnecessary public road acquisition to the purpose of the system, nor treatment of unjustified third party data has been provided to this procedure.

IV

From the set of allegations and evidence provided, it can be concluded that beyond questions matters of a civil nature, the denounced system obeys a legitimate purpose, ing the information signs necessary to inform that it is a zone video-surveillance, not corresponding to this body to assess issues judged of a civil nature, which are inclined to the exclusive consideration of the land, where A video-surveillance system has been installed for security reasons, which has to order the File of this procedure.

The parties are reminded that this Agency should not be instrumentalized in issues outside its jurisdictional framework, and should be issues of a civil nature. vile object of analysis in the appropriate judicial instances where the parties must They will expose their proposals and abide by the final judicial decisions that assess the merits of the matter(s) raised.

Therefore, in accordance with the applicable legislation, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER THE FILE of these actions against the entity COMMUNITY OF OWNERS R.R.R., with NIF ***NIF.1, as it is not accredited the commission of any infraction in the matter that concerns us.

SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS R.R.R.

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 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

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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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