

□ File No.: EXP202102401

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: COMMUNITY OF OWNERS R.R.R. (*hereinafter, the part

claimant) on September 6, 2021 filed a claim with the Agency

Spanish Data Protection. The claim is directed against A.A.A. with NIF

***NIF.1 (hereinafter, the claimed party). The grounds on which the claim is based

are the following:

"has installed on the landing where his home is located, next to the door of

his home, a video surveillance camera that would capture common areas of the

Community" (folio nº 1).

They provide camera images, through documentary evidence to that effect

(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

date 09/28/21, to proceed with its analysis and inform this Agency in the

period of one month, of the actions carried out to adapt to the requirements

provided for in the data protection regulations.

THIRD: On December 6, 2021, in accordance with article 65 of the

LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On February 9, 2022, 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 6 of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: When the database of this Agency was consulted, there is no allegation of the one claimed, stating the Commencement Agreement notified in BOE dated 03/14/22.

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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PROVEN FACTS

First. The facts bring cause of the claim dated 09/06/21 through the

which translates as the main fact the following:

"has installed on the landing where his home is located, next to the door of his home, a video surveillance camera that would capture common areas of the Community" (folio nº 1).

Second. She is accredited as the main person in charge of the facility Doña A.A.A.

Third. It is accredited that a video-surveillance device has been installed without have the proper authorization from the Board of Owners, affecting the data of third parties who are intimidated by it.

Fourth. The party claimed has not justified the presence of the camera or the cause (s) installation of the same, ignoring the recommendations of the Board of owners.

Fifth. There is no evidence that the system has been legally informed, either through

communication to the governing bodies of the Community or through the presence of informative sign in visible area.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 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 Protection Agency of data.

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

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II

Before going into the substance of the matter, remember that in the Agreement to Start the present procedure it was mentioned that, in the case of not making any allegation

At the same time, this could be considered a "resolution proposal".

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which the party claimed was informed in the agreement to open the proceeding- establishes that if allegations are not made within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the party complained against has made no objections to the agreement to initiate the file and In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

III

In the present case, we proceed to examine the claim dated 09/06/21 by means of which the following is transferred as the main fact:

"has installed on the landing where his home is located, next to the door of his home, a video surveillance camera that would capture common areas of the Community" (folio nº 1).

The facts denounced could imply an affectation to the content of art. 6 of the current GDPR.

To install cameras in common areas, authorization from the Board of neighbors of the property, having to request it in the corresponding order of the day, and must in any case be approved in the terms of the LPH (Property Law Horizontal).

Individuals are responsible for the installed video-surveillance systems to be comply with current legislation, and must be able to prove such extremes before the competent Authority.

Cameras installed by individuals must be oriented towards your space

private area avoiding the capture of private area of third parties without just cause.

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In no case will the use of surveillance practices beyond the environment be allowed.

object of the installation and in particular, not being able to affect public spaces

surrounding buildings, adjoining buildings and vehicles other than those accessing the space guarded.

Security cameras installed in private spaces will not be able to obtain

images of public spaces, the security function of public spaces

corresponds exclusively to the State Security Forces and Bodies.

Likewise, in the case of false cameras, they must be oriented

to a private area avoiding intimidation of the neighboring neighbors who

They do not know if they process personal data or not.

Fake cameras can also affect privacy

claimed, in such a way that it is a criterion maintained by this Agency

that they limit their radius of action (orientation) towards a private area,

respecting the tranquility of the private life of the affected party, which does not have to

know the nature of the system, but also cannot bear to be intimidated by it.

himself in his personal and/or domestic sphere.

Remember that there are less invasive measures to protect the

private property, such as alarm systems or interior cameras,

avoiding the use of this type of cameras in outdoor areas that affect the

neighborhood coexistence.

IV

In accordance with the evidence available in this proceeding sanctioning party, it is considered that the party claimed has proceeded to install a camera in the community wall affecting the common area, without having the necessary support for it.

For the installation of surveillance services in a community of owners, needs the votes in favor of 3/5 of the total owners, who must also represent at least 3/5 of the participation quotas.

Regardless of the civil issue, the presence of cameras in a community of owners is an "exceptional" measure that must weigh the affectation of the rights of third parties, which are affected by the presence of the itself, by "processing your personal data" without proper information and affecting your personal privacy.

There are less harmful measures for the rights of third parties that are compatible with home protection (eg sound alarm or interior camera, etc.) that avoid the presence of devices in the landing area of the dwellings, which

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affect the rights of third parties that are recorded in their inputs/outputs, without any justified cause thereby affecting your personal data.

The known facts constitute an infraction, attributable to the party claimed, for violation of the content of article 6 RGPD.

The art. 83.5 RGPD provides the following: "Infringements of the provisions following will be sanctioned, in accordance with section 2, with administrative fines EUR 20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for 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, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well such as the number of interested parties affected and the level of damages that have suffered; (art. 83.2 a) RGPD), having installed a camera on a common wall, without authorization from the Board of Owners, thereby affecting a number indeterminate number of neighbors of the property.
- the intent or negligence in the infringement; (art. 83.2 b) RGPD), when controlling in excess zone of communal nature, being able to be considered the conduct described gross negligence for the reasons stated, being aware of the illegality of action, ignoring the warnings of the governing bodies of the Community of owners.

In accordance with the above, it is considered correct to impose an encrypted sanction in the amount of €600 (six hundred euros), by having a camera system whose recording does not find legal support, affecting the free transit zone of third parties without just cause and intentionally, sanction located on the lower scale for this type of behavior.

SAW

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

in charge of the treatment that the treatment operations comply with the

provisions of this Regulation, where appropriate, in a certain way

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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 having assessed the criteria for

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A., with NIF ***NIF.1, for an infraction of Article 6 of the

RGPD, typified in Article 83.5 of the RGPD, a fine of €600 (six hundred euros).

SECOND: ORDER the claimed, so that in accordance with article 58

RGPD, proceed within ONE MONTH to withdraw the device in question

providing documentary evidence with date and time that proves such end.

THIRD: NOTIFY this resolution to A.A.A. and REPORT the result

of the proceedings to the complaining party.

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, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term 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 on behalf of the Agency Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case Otherwise, it will be collected in 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 voluntary will be until the 20th day of the following month or immediately after, and if between the 16th and last day of each month, both inclusive, the payment term It will be 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 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

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day following the notification of this act, as provided 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
The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by
writing addressed to the Spanish Agency for Data Protection, presenting it through
Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-
web/](https://sedeagpd.gob.es/sede-electronica-web/)], or 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 proving the effective filing of the contentious appeal-
administrative. If the Agency was not aware of the filing of the appeal
contentious-administrative within a period of two months from the day following the
notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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