

□ Procedure No.: PS/00394/2020

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 claimant) dated July 13, 2020

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, the claimed one). The grounds on which the claim is based are
literally the following:

“...the Community of Owners has proceeded to install a camera

security on private property without proper authorization from the owner.

where both the terrace surrounding the pool and the private rooms are the focus.

das of the house "Club House", in short, practically the entire interior of

the home of my client, thus breaching the Law on the Right to Privacy,

as well as the regulations of the Spanish Agency for Data Protection" (folio nº 1).

Together with the claim, it provides documentary evidence (Annex I) that proves the presence
of the devices that are the subject of the complaint.

SECOND: On 08/04/20, the claim is TRANSFERRED to the party

demandated so that it manifests in law what it deems appropriate.

THIRD: On 11/18/20, a written statement of allegations was received from the respondent,
celebrating the following:

“By means of this document, the following documents are provided, compli-
ment of the aforementioned requirement:

1. The CIF of the community is ***NIF.1 and the contact telephone number of the administrator is

BBB is ***PHONE.1

2. As DOCUMENT 3, posters and locations of the different cameras are provided

in the residential complex

3. As DOCUMENT 4 minutes of the owners' meeting that agrees to the installation of security cameras

4. As DOCUMENT 5, images of the 8 existing cameras in the interior are provided.

rior of the closed area of the R.R.R. COMMUNITY OF PROPRIETORS, whose recording

tion is for less than a month and to have access to it in case of any

theft or accident in the urbanization.

5. As DOCUMENT 6, a contract for the provision of maintenance services is provided.

lie of the cameras”.

FOURTH: On March 3, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

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alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the

GDPR.

FIFTH: On 06/15/21, the database of this

agency without stating any allegation in this regard.

SIXTH: On 06/14/21 a letter is received from the claimant without specifying a request

any, attaching a copy of the act of admission to processing of the claim dated

07/13/2020.

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. The facts bring cause of the claim dated 07/13/20 through the

which the following is transferred to this body:

“...the Community of Owners has proceeded to install a camera

security on private property without proper authorization from the owner.

where both the terrace surrounding the pool and the private rooms are the focus.

das of the house "Club House", in short, practically the entire interior of

the home of my client, thus breaching the Law on the Right to Privacy,

as well as the regulations of the Spanish Agency for Data Protection” (folio nº 1).

Together with the claim, it provides documentary evidence (Annex I) that proves the

presence of the devices complained of.

Second. It is accredited as the main responsible COMMUNITY OF PROPERTY

TARIOS R.R.R.

Third. The effective address of the res-

ponsible before which to exercise the rights within the framework of the RGPD.

Fourth. There is no proof that the Board of Owners has given authorization to

guna to the installation of the video-surveillance camera system.

Fifth. The set of cameras of the system is according to the statement of the claimed

constituted by a total of 8, although it only provides screen printing of five of

them, the explanations being imprecise in terms of capturing them.

Sixth. One of the cameras records the pool area excessively, without any explanation at all.

no one has been given about its installation in a "sensitive" area.

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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

In the present case, a claim dated 07/13/20 is examined through from which the following is transferred as the main fact:

“...the Community of Owners has proceeded to install a camera security on private property without proper authorization from the owner. where both the terrace surrounding the pool and the private rooms are the focus. das of the house "Club House", in short, practically the entire interior of the home of my client, thus breaching the Law on the Right to Privacy, as well as the regulations of the Spanish Agency for Data Protection” (folio nº 1).

The physical image of a person, in accordance with article 4.1 of the RGPD, is a personal data. and its protection, therefore, is the subject of said Regulation. In article 4.2 of the GDPR defines the concept of "treatment" of personal data.

The exposed facts may suppose a violation of art. 5.1 c) GDPR, “Personal data will be: c) adequate, pertinent and limited to what is necessary ary 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.

The installation of this type of device is remembered must have the mandatory

informative poster, indicating the purposes and responsible for the treatment in its case of the

Personal data.

Article 22 section 4 LOPDGDD (LO 3/2018, December 5) provides:

“The duty of information provided for in article 12 of the Regulation (EU)

2016/679 will be understood to be fulfilled by placing an informative device

in a sufficiently visible place identifying, at least, the existence of the treatment,

the identity of the person in charge and the possibility of exercising the rights provided in

Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

informative positive a connection code or internet address to this information.

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In any case, the person in charge of the treatment must keep available to the

affected the information referred to in the aforementioned regulation”

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, the movements of the remaining neighbors are controlled

(as) who have not given their consent for the surveillance of common transit areas.

According to the Horizontal Property Law (LPH), it is possible to install or remove

porter services, concierge, surveillance or other common services of general interest

general, as long as the necessary quorum is achieved. In this case, be-

3/5 of the total number of owners would be necessary, which, in turn, represent 3/5 of

participation fees.

The absence of said consent supposes a treatment of data outside of the cases allowed by the regulations in force, especially if it affects a transit area of the same or has not been duly informed about the "treatment" of these.

The purpose of video-surveillance systems is the security of installations. tions against possible theft or acts of vandalism, fulfilling a preventive purpose in front of them, having to respect the areas reserved for the intimacy of the co-muneros or in any case restricting the measures adopted in accordance with the regulations in force.

Obtaining personal data (images) from transit areas or areas reserved to privacy (pool area), is not included in the purposes provided that qualify as external security of the installed system, apart from the a mere informative information, without specifying the way to obtain consent. of those affected, nor specify before whom to exercise the rights recognized in articles 15-22 RGPD, in case of affectation of rights of third parties unrelated to the Community (vgr. relatives, friends, distributors, installers, etc).

III

In accordance with the evidence available in this proceeding, penalty, it is considered that the person claimed has proceeded to install a system of video-surveillance that does not seem to have the support of the Board of Owners, affects with the same to the privacy of the community members, whose data is treated outside of the cases allowed by the regulations.

The known facts constitute an infraction, attributable to the defendant, for violation of the content of art. 5.1 c) RGPD, previously transcribed.

IV

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The art. 83.5 RGPD provides the following: "Infringements of the following provisions

will be sanctioned, in accordance with section 2, with administrative fines of 20

EUR 000,000 maximum or, in the case of a company, an equivalent amount.

to a maximum of 4% of the total global annual turnover of the financial year

above, 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 are taken into account:

-That the denounced system is oriented towards the private area of third parties, without

justified cause, causing a situation of discomfort in the neighbors of the property,

who are affected in their right to personal image (data), when a con-

control of their activities, (art. 83.2 a) RGPD).

-the intentionality or negligence of the infringement (art. 83.2 b RGPD), when appreciating-

irregularities in the measures adopted in accordance with the regulations in force, such as

would be the case of the lack of indication on the sign of an address before which you can

exercise the rights regulated in the RGPD.

In accordance with the foregoing, an initial sanction encrypted in the amount

of €2000, (Two Thousand Euros) amount located in the lowest scale for this type of investment.

fractions.

The person in charge of the Community of owners must explain the reason for the

installation, as well as that it conforms to current legislation, providing all the

necessary documentation for this purpose (eg photograph of the poster duly completed)

Mentioned, Minutes of the Board of Owners approving the installation; indication of all
all cameras installed with screen printing with date and time of what is
observe in the same etc).

Likewise, the location of the claimant's home must be indicated in the
complex, as well as proximity of the camera (s) that could affect it, contributed im-
screen pressure to that effect.

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 the COMMUNITY OF PROPRIETORS R.R.R., with NIF ***NIF.1,
for an infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD,
a fine of €2,000 (Two Thousand Euros).

SECOND: ORDER the entity denounced COMMUNITY OF OWNERS

RRR so that within ONE MONTH from the notification of this act

Proceed to regularize the installed camera system:

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-Complete in legal form the informative posters indicating an address
authority to direct the exercise of rights, if applicable.

-Provide a copy of the Minutes of the ordinary/extraordinary Meeting that authorizes the
installation of the video-surveillance system.

-Provide screen printing of images from all cameras
installed.

THIRD: NOTIFY this resolution to the COMMUNITY OF OWNERS

R.R.R.

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 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

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writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<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

Director of the Spanish Data Protection Agency

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