

□ Procedure No.: PS/00389/2020

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 August 5, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against COMMUNITY OF OWNERS OF THE BUILDING

STREET ***ADDRESS.1 with CIF ***CIF.1 (hereinafter, the claimed). The reasons in

on which the claim is based are succinctly as follows:

“Without any notice to the residents of the property, unilaterally,

We understand that with the consent of the Community of Owners,

proceeded to the installation of three video-surveillance cameras in the garage of the building”

(folio no. 1).

“This part understands that their rights have been violated in relation to

to personal data, obtaining image recording without having

given any consent (...).”

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

manifested in relation to the informative poster.

A copy of the Act (Doc. No. 1) of authorization of the

video surveillance cameras.

SECOND: On 09/07/20, the claim is TRANSFERRED to the party

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

THIRD: On 10/21/20, a written statement of allegations is received from the respondent,

claiming the following:

“That the cameras are installed by the company PlazaTel Sistema Coruña S.L,
being the owner Community of Owners ***ADDRESS.1, certifying the
installation of the same.

A copy of the contract with the entity responsible for the installation is attached—
Plazatel Sistema Coruña S.L.

Documentary evidence is attached (Photograph) with the poster installed by the entity
Responsible for system installation.

FOURTH: On 02/03/21, an Initiation Agreement is issued against the one claimed by the
alleged infringement of the content of article 13 RGPD, by not disposing as

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appears from the claim "informative poster" approved informing that it is
of a video-monitored area.

FIFTH: On 03/02/21 a written statement is received arguing that
succinctly the following:

“The installation of four recording cameras in the garage of the Building (not
three as stated in writing in agreement) IT IS NOT DONE UNILATERALLY, .
because it is carried out with the authorization and as a result of the mandatory approval in
Extraordinary Meeting that for this purpose was reflected in the sealed Minutes Book of the
04/11/2019 and in which the express consent of more than 3/5 parts of the
total number of owners, as indicated by the LPH.

Prior to installation, the installation company provisionally placed in
the areas that would be affected by the cameras, informative posters with the only

intention to report its presence without being in operation, nor with the capacity of any recording (...)

"The Community, through a sworn declaration of its President, extends the documentation to the one already presented where it is declared that today and since its installation, the installed camera system was NOT activated with the ability to recording of images and therefore the Community has NOT carried out any treatment of personal data by this means.

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. On 08/05/20, this Agency receives a claim transferring as main fact is the following:

"Without any notice to the residents of the property, unilaterally,

We understand that with the consent of the Community of Owners, proceeded to the installation of three video-surveillance cameras in the garage of the building" (folio no. 1).

"This part understands that their rights have been violated in relation to personal data, obtaining image recording without having given any consent (...)".

Second. It is accredited as the main responsible Community of Owners Building C/ ***ADDRESS.1.

Third. Attached on 03/02/21 is a copy of the Book of Minutes where the signature is recorded of the claimant, approving the installation of a camera system in the Community of owners in legal form.

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Fourth. It is verified that the installed cameras have not been operative, proceeding to the adaptation of the system to the regulations in force, as a previous step to its operability. To date, they are still inactive pending the conclusion of the present procedure.

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, we proceed to examine the claim dated 08/05/20 by means of which the following is transferred as the main fact:

“Without any notice to the residents of the property, unilaterally,

We understand that with the consent of the Community of Owners, proceeded to the installation of three video-surveillance cameras in the garage of the building” (folio no. 1).

The recording of the image of a person is a data treatment and therefore, it is application of the General Data Protection Regulation and also as expresses this organism “The image of a person to the extent that it identifies or can identify it constitutes personal data.

Article 22 section 4 LOPDGDD 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 for in the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code or internet address to this information. In any case, the data controller must keep available to those affected the information referred to in the aforementioned regulation. This body has ruled on the matter by establishing that "it is not necessary to be placed under the camera, it will be enough to place the badge informative in a sufficiently visible place, both in open and closed spaces. Therefore, it would be advisable that if, in the case of a building subjected to video surveillance, at the entrance of the same, the information poster will be located". The installation of the poster responds to the duty of information imposed by the Article 13 of the General Data Protection Regulation.

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The informative poster has been updated on the website of this organization with reason for the entry into force of GDPR 2016/679 of the European Parliament and of the Council, of April 27, 2016, differs from the previous one in the sense that the reference disappears regulations and the description required for it to comply is made more exhaustive. its purpose of reporting.

Information about the existence of data processing of video surveillance, is done just as exhaustively as the rest of data processing, since

that this type of treatment also requires adequate information so that the

user can know the destination of the information that is managed.

It will be necessary to indicate in this section all the necessary data so that the

user knows how to proceed to exercise their rights, collected in the RGPD:

access, rectification, cancellation, opposition, portability and limitation of treatment.

It will have to be indicated, in addition to the channel to be used (by ordinary mail, certified, email,

in person, etc), the necessary documentation to carry out this exercise of

right (instance, identification document, etc.).

The art. 13.1 GDPR provides the following:

“When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a)

c)

the identity and contact details of the person in charge and, where appropriate, of their representative;

the purposes of the treatment to which the personal data is destined and the basis legal treatment;

III

In a letter of allegations dated 03/02/21, the President of the Community denies the

imputed facts, arguing that the decision to install the cameras was

legally adopted by the Board of Owners, with the consent

informed of the claimant, providing a copy of the Minutes Book where the signature is recorded handwriting of it.

For the installation of cameras in common areas, the agreement will be necessary

of the Board of owners that will be reflected in the minutes of said Board.

According to the Horizontal Property Law, it is possible to install or remove porter services, concierge, surveillance or other common services of interest general, as long as the necessary quorum is achieved. In this case, 3/5 of the total owners would be necessary, which, in turn, represent 3/5 of participation fees. -art. 17 section 3º LPH--.

The signs are installed by the contracted company without being operational yet the camera system, as a preliminary step to the pre-installation and adoption of measures necessary for their subsequent operation.

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So, once the consent of the group of community members, it is the decision of the community to install a camera system safety reasons of the facilities, counting the same with the posters notices in a visible area informing that it is a video-monitored area.

The mere presence of the posters (still incomplete) does not prove the "treatment of data" intended because, as has been initially accredited, the system does not was operational, so no right of the claimant has been affected in the matter at hand.

In these cases, it is usual for the Presidency to report through the channel have established (eg bulletin board, mail, etc.) from the moment in which the themselves become operational, an issue that did not occur at the time denounced as they were only pre-installed, without "processing data any" nor of the claimant, nor of any other neighbor of the property.

It is recalled for informational purposes only that in no case the cameras may record images of public roads, or adjoining homes (with the exception of the access to the property and authorized areas), given that it would be the responsibility of the Armed Forces and State Security Corps.

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 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

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appreciation of the authorities or bodies called to resolve, destroy this presumption (TCo Auto 3-12-81).

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Based on the foregoing, it can be concluded that the infringement has not occurred.

described reason why it is appropriate to order the FILE of this procedure.

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: ORDER the FILE of this procedure as there is no

accredited the commission of any administrative infraction in the matter that we occupies.

SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

OF THE BUILDING STREET ***ADDRESS.1 and REPORT the result of the actions to the claimant A.A.A.

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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