

□ Procedure No.: PS/00364/2020

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) on July 1, 2020 filed
claim before the Spanish Data Protection Agency. The claim is
directs against COMMUNITY OF OWNERS B.B.B. with NIF ***NIF.1 (hereinafter,
the claimed). The grounds on which the claim is based are various "irregularities"
in the installation of video-surveillance cameras, including the capture of space
public.

Along with the claim, provide documentary evidence (Annex I) that proves the installation
of the cameras.

SECOND: On 07/16/20, the claim is TRANSFERRED to the
denounced so that it manifests what it deems appropriate in law.

THIRD: On 09/09/20, a response was received from the defendant stating
which has an informative poster, although it does not provide photographs of them.

The installation of 17 video-surveillance cameras is recognized, although it does not provide
screen printing (date and time) that proves what is captured with them.

FOURTH: On January 8, 2021, the Director of the Spanish Agency for Pro-
Data Protection agreed to initiate a sanctioning procedure against the defendant, in accordance with
the provisions of articles 63 and 64 of Law 39/2015, of October 1, on the Procedure
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.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations (02/18/21) in which, in summary, it states the following:

-The data of the person in charge of the treatment of the video cameras is the Community of Owners B.B.B.

-We provide photographs of informative posters of the existence of security cameras. video surveillance.

-We attach a copy of the plan that contains the distribution of the chambers of video-surveillance of the Community. I provide as Evidence Document No. 3.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/7

- We attach photographs of each of the cameras individually together with the corresponding informative poster of those that correspond to some access to common areas. (evidence document No. 5).

SIXTH: On 02/24/21, a “Resolution Proposal” is issued by means of which

An administrative penalty of €2,000 is proposed for the infraction accredited by art. 5.1 c) GDPR.

SEVENTH: Attached as an annex is a list of documents in the procedure, remembering the full access to the documentation of this Administrative file.

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

PROVEN FACTS

First. On 07/01/20, a claim is received at this Agency through the

which transfers various "irregularities" in the installation of video cameras-

surveillance, including capturing public space.

Second. It is identified as the main responsible Community of Owners

B.B.B.

Third. The Community of owners recognizes the installation of the system, contributing

photograph of the availability of informative poster(s).

They do not comply with current legislation by not reporting, in their case, the

responsible for the treatment, indicating only that it is a video-

guarded.

Fourth. The video-surveillance system according to documentary contribution of the claimed

allows to obtain image of adjacent public space without just cause.

-Camera nº1, the cars parked on the sidewalk are observed, obtaining images

nes of the entire width of the road and adjoining sidewalk.

-Camera nº 3, the cars parked on the sidewalk are observed, obtaining images

nes of the entire width of the road and adjoining sidewalk.

-Camera nº 7, the cars parked on the sidewalk are observed, obtaining images

nes of the entire width of the road.

-Camera nº 14 captures the entire adjacent road without just cause.

Fifth. It is proven that the video-surveillance camera system was authorized

do by Board of Owners (Proof document No. 2).

"The placement of the cameras is approved and the placement of the cameras is approved by a majority"

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

FOUNDATIONS OF LAW

Yo

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, the claim dated 07/01/20 is examined by me-
gave from which the following is transferred as the main fact:

“Irregularities in the installation of the video-surveillance system, with possible acquisition of public space” (folio nº 1).

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.

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.

They will be installed at the different entrances to the video-monitored area and, in a visible place, one or
several posters that inform that you are accessing a video-monitored area.

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.

The recording system will be located in a guarded place or with restricted access. At

recorded images will be accessed only by authorized personnel, who must enter a code say username and password. Once the system is installed, it is recommended regular password change, avoiding easily deductible ones.

It should be remembered that even in the case of a "simulated" camera, the same must be oriented towards private space, since it is considered that this type of devices can affect the privacy of third parties, who are intimidated by the herself in the belief of being the object 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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

III

4/7

In accordance with the objective evidence available in this proceeding, sanctioning procedure, it is considered that the defendant has a video system Surveillance that does not comply with current legislation.

The contribution of the screen prints dated 02/01/21 allows us to verify excessive capture of the cameras with the numbers 1st, 3rd, 7th and 14th affecting to adjacent public area disproportionately.

Security cameras installed in private spaces will not be able to obtain images public spaces, the security function of public spaces corresponding to exclusively to the State Security Forces and Bodies, not to the Companies. Private Security companies.

The Private Security Law, in its Article 42 on Video Surveillance Services

establishes:

“Cameras or video cameras may not be used for private security purposes to take images and sounds of roads and public spaces or public access except in assumptions and under the terms and conditions provided for in its specific regulations, prior administrative authorization by the competent body in each case.

The facts are constitutive of an infraction, attributable to the defendant, for violation of the content of art. 5.1 c) GDPR.

Installed cameras should be limited to indoor security where applicable of the facilities of the Community of owners, not being able to obtain images of adjacent spaces qualified as public, being an ex-competition exclusive to the State Security Forces and Bodies.

Therefore, capturing images of public spaces by security cameras private surveillance, must be limited to what is strictly necessary, applying in any case the principle of proportionality.

Therefore, it turns out that the respondent entity is aware of the existing limitations for recording images on public roads and despite this has not adopted the precise precautions to prevent said recording from being produced by capturing public spaces not necessary for the intended purpose through which people transited whose images are captured and temporarily stored and, therefore, treated without the consent of those affected. And this means that you must take responsibility of said excess in the recording produced by the cameras.

IV

Regarding the alleged inexistence of guilt in committing the offending conduct, Torah. In this sense, there is no doubt that guilt constitutes an essential note in sanctioning matter and that the so-called strict liability has no place in De-sanctioning administrative law.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/7

The Supreme Court (Sentences of April 16 and 22, 1991) considers that of the element of culpability, it follows “that the action or omission, qualified as an infraction sanction administratively, must be, in any case, attributable to its author, by intent or recklessness, negligence or inexcusable ignorance.”

The National Court, in Judgment of June 29, 2001, in matters of protection of personal data, has declared that “simple negligence or in compliance is enough fulfillment of the duties that the Law imposes on the persons responsible for files or of data processing to exercise extreme diligence...”.

The Supreme Court (Judgments of July 5, 1998 and March 2, 1999) comes understanding that recklessness exists whenever a legal duty of care is disregarded. given, that is, when the offending subject does not behave with the required diligence. Dili- agency whose degree of demand will be determined in accordance with the circumstances current in each case, such as the special value of the protected legal interest or the professionalism required of the offender. In this sense, the aforementioned Judgment of June 5 of 1998 requires professionals in the sector “a duty to know especially the applicable rules”.

v

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 is taken into account:

-the nature, seriousness and duration of the offence, taking into account the nature

nature, scope or purpose of the treatment operation in question as well as the

number of affected parties and the level of damages they have suffered

(art. 85.2 a) RGPD).

- the intention or negligence in the infringement (art. 85.2 b) RGPD), by not con-

have cards approved to the regulations in force (RGPD) indicating, where appropriate, the

responsible for the treatment to whom you can contact in your case.

Based on the foregoing, a sanction is agreed in the amount of €2,000,

when the illegality of the installed system is proven, sanction located on the scale

lower for this type of offence.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/7

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 OWNERS B.B.B., 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: NOTIFY this resolution to the COMMUNITY OF OWNERS

BBB and INFORM the A.A.A. claimant.

THIRD: 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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/7

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

938-131120

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es