

□ File No.: EXP202101345

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: The entity COMUNIDAD DE PROPIETARIOS R.R.R. (*hereinafter, the
claimant party) on July 29, 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:

“for the installation of a home camera that, from inside their home,

focuses on other people's homes, violating the fundamental right to privacy per-

personal and familiar and in the image of several of its neighbors. Established in the ar-

Article 18 of the Spanish Constitution, and also contravening several precepts of the

data protection legislation, contained in the General Protection Regulation

of Data, RGPD (EU) 2016/679, of April 27, and Organic Law 3/2018, of Protection

tion of Personal Data and guarantee of digital rights (...)”-folio nº 1--.

Documentary evidence is provided that accredits the presence of the orientation device.

towards the outside area from the terrace area of the defendant's home (Annex

YO).

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-

cha 08/20/21 and 09/08/21, to proceed to its analysis and inform this Agency

within a month, of the actions carried out to adapt to the requirements

provided for in the data protection regulations.

No response has been received to this letter, nor has any clarification to this effect been provided.

produced in a timely manner.

THIRD: On November 15, 2021, the Director of the Spanish Agency

of Data Protection agreed to admit for processing the claim presented by the party

claimant.

FOURTH: On January 17, 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 5.1.c) of the RGD, typified in Article 83.5 of the

GDPR.

FIFTH: The entries in the computer system of this Agency on the date

03/08/22 no response has been received from the respondent regarding the facts

widely exposed.

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In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

First. The facts are specified in the claim filed with this body

“for the installation of a home camera that, from inside your home, focuses

access to other people's homes, violating the fundamental right to personal privacy and

family and in the image of several of his neighbors” (folio nº 1).

Second. It is identified as the main person in charge of the A.A.A. installation.

Third. There is evidence of the presence of a webcam-cam that is oriented towards the community patio area, which has not been authorized by the Board of Owners (as).

Photographs (Annex I) claim dated 07/29/21.

Fourth. There is evidence of the presence of a poster of the company Securitas Direct, but there is no data is responsible for processing the data obtained.

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

Before going into the substance of the matter, remember that in the Initiation Agreement of the present procedure it was mentioned that, in the case of not making any allegation to the itself, 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- established that if allegations are not made within the stipulated period on the content of the agreement, initiation document, when it contains a precise statement about the response imputed responsibility, may be considered a resolution proposal. In the present

In this case, the agreement to initiate the sanctioning file determined the facts in which that the imputation was specified, the infraction of the RGPD attributed to the claimed one and the sanction that could be imposed. Therefore, taking into consideration that the claimant mada has not formulated allegations to the agreement of beginning of the file and in attention to established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered

in the present case proposed resolution.

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III

In the present case, we proceed to examine the claim dated by means of the which is transferred the "presence of installed camera affecting common areas without have the consent of the Board of Owners" (folio nº 1).

The claimed one has a camera (s) that is badly oriented with a purpose "dissuasive" authority against third parties, ignoring the recommendations of the Owner board.

Apart from other issues, which are unspecified, the respondent has installed side imaging device(s) disproportionately, oriented two towards windows of owners, without any clarification given in this regard, ignoring the various "warnings" of the elected officials of the same.

The facts denounced could imply an affectation to the content of art. 5.1 c) RGPD (regulation currently in force) that provides: "personal data will be: c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed ("data minimization") (...)".

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

We report to the competent authority.

Cameras installed by individuals must be oriented towards their private space. vative avoiding the capture of private area of third parties without just cause.

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

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

contiguous buildings and vehicles other than those accessing the guarded space.

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

to a private area, avoiding intimidation of neighboring neighbors who are unaware

know whether or not they process personal data.

IV

In accordance with the extensive evidence available in this pro-

sanctioning procedure, it is considered that the claimed party has a system

of video-surveillance that affects data of third parties without just cause.

The respondent has at least one small web-cam connected to her computer.

personal detainer that acts as a video-surveillance camera oriented towards a

patio with exterior windows that affect their personal privacy, which

they are intimidated by the device in question.

The genesis of the conflict is a matter of a civil nature, as there is

a dispute between various owners, having installed the aforementioned device with

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the purpose of intimidating some owners, directing it towards the windows to

avoid opening them, being the usufructuary of the patio where they are installed.

you give.

The installation of a video surveillance camera must be consistent with the purpose

of the same (vgr. security of the property as an example), weighing the rest of

rights that may be affected, especially those of third parties, not being able to install as a way to impose claimed rights when there are resolution channels or even prosecuting them.

Article 7.2. of the Horizontal Property Law (LPH) indicates that the mo-

These will be those "prohibited in the statutes, which are harmful to the farm or that contravene the general provisions on annoying activities, unhealthy inappropriate, harmful, dangerous or illicit".

The orientation towards a private third-party space, with the consequent "treatment data processing" supposes an affectation to the rights of the affected (as) that in-complies with current regulations on data protection.

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

Article 83.5 RGD provides the following:

v

"The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, treating-of a company, of an amount equivalent to a maximum of 4% of the volume of Total annual global business of the previous financial year, opting for the one with 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 of the infraction by having a video-surveillance system that is oriented towards the area of third parties without just cause, processing data of natural persons identifiable or identifiable cases (art. 83.2 a) RGD).

-the intentionality or negligence of the infringement, (art. 83.2 b) RGPD), since with the video-surveillance system is intimidating the neighbors of the property, without cause justified any, highlighting the poor orientation of the installation of the device (s) and the non-authorization of the owners' meeting, which makes the conduct described negligence at least gross.

The evidence provided is considered sufficient to prove the infringement object of imputation, when verifying the bad orientation of the same, as well as the

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absence of response despite the requirements of this body on

specific and precise questions, the device(s) being oriented to the area of

Tana of the neighbors of the property with an intimidating purpose.

For all this, a sanction is agreed in the amount of €500 (Five hundred euros),

by having a camera system that excessively records the area of third parties unattended.

to any requirement, a sanction located on the lower scale of this type of infraction.

tions and according to the nature of the facts described in relation to a natural person.

AC.

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

of the treatment that the treatment operations comply with the provisions

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

The parties are reminded that all other matters of a civil nature must be resolved in the appropriate instances, adjusting their behavior to the minimum rules of good neighborliness, avoiding the instrumentalization of this Agency for matters outside its competence framework.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria of the 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 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a fine of €500 (Five hundred euros).

SECOND: ORDER the person claimed so that within ONE MONTH it proceeds from in accordance with article 58.2 d) RGPD in the following terms:

-Removal of any type of image capture device that affects to the patio area, having to prove such end with a photograph with date and time that so find out.

THIRD: NOTIFY this resolution to A.A.A.

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, of the Administrative Procedure Co- of the Public Administrations (hereinafter LPACAP), within the term of payment 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

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restricted number ES00 0000 0000 0000 0000 0000, opened in the name of the Spanish Agency

Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of

Otherwise, it will be collected during 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

will be until the 20th day of the following month or immediately after, and if

is between the 16th and last day of each month, both inclusive, the term of the payment

It will be valid 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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for 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 interested party

do states its intention to file a contentious-administrative appeal. If it is-

In this case, the interested party must formally communicate this fact in writing

addressed to the Spanish Agency for Data Protection, presenting it through the Re-

Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

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

that proves the effective filing of the contentious-administrative appeal. If the

Agency was not aware of the filing of the contentious-administrative appeal

tive within two months from the day following the notification of this

resolution, would end the precautionary suspension.

Sea Spain Marti

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