

□ Procedure No.: PS/00353/2019

938-051119

RESOLUTION PS/00353/2019 TERMINATION OF THE PROCEDURE BY
VOLUNTARY PAYMENT

In sanctioning procedure PS/00353/2019, instructed by the Spanish Agency for Data Protection, against COMUNIDAD DE PROPIETARIOS R.R.R. (hereinafter, the claimed), in view of the Complaint filed by Ms. A.A.A., and based on the following,

FACTS

FIRST: Mrs. A.A.A. (*hereinafter, the claimant) dated June 24, 2019 filed a claim with the Spanish Data Protection Agency. The claim is directed against COMUNIDAD DE PROPIETARIOS R.R.R. (hereinafter, the reclaimed).

The reasons on which the claim is based are "installation of video cameras-surveillance without having the mandatory information poster, affecting your property particular" (folio nº 1).

Together with the claim, it provides documentary evidence (Doc. nº 1, 2 and 3) that certifies the installation of the cameras in the Community of owners.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, the Subdirector General for Inspection of Data proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed that the data controller is the claimed party.

THIRD: On 08/20/19 a reply is received from the entity denounced in relation to the "facts" object of transfer of this body:

- Provides photographs of the posters installed in the Community informing of the presence of cameras.

- The visualization of the images is the responsibility of the Community of owners.

- The term of conservation of the images is from 15 to 20 days according to the storage hard drive capacity.

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FOURTH: On December 17, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: On 02/04/20, this Agency received a written statement of allegations from the reported stating the following:

“In the Agreement to Start the sanctioning procedure, this body does not states that any test has been carried out that can prove that the facts related in the Complaint filed by a third party are true and even so, if carrying out any test, initiates a sanctioning procedure based on a

mere complaint (...)

Likewise, to prove the lack of security existing in the Urbanization, provides as Doc. No. 5 complaint filed by owners of several homes in the Community where the Duty Court is informed that its Homes have been violently occupied.

With everything stated above, it is accredited that the Community of owners at all times has complied with its legal obligations and that, to the owners of them, they had no other option but to install them to ensure safety (...).

"Likewise, as was accredited with photographs contributed to this Agency, orientation and focus of the security camera installed by company approved is EXCLUSIVELY the private street of the Urbanization and private area Of the same (...)"

For all these reasons, I request that the File of this procedure be remembered for not have committed any infraction (...)"

SIXTH: On 02/11/202, a Resolution Proposal is issued in which it is confirmed the infraction committed, proposing a penalty of €2,000 (Two Thousand Euros), by not adjusting the installed system to current legislation.

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 06/24/19, this AEPD received a letter from the complainant transferring as main fact:

"Installation of video-surveillance cameras without having the mandatory sign informative" (folio nº 1).

Second. It is identified as the main responsible COMMUNITY OF

OWNERS R.R.R..

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Third. In the Community of owners, a camera system is installed of video-surveillance, being the decision of the Board of owners to proceed to the installation of the system for security reasons (Act of the Board of Owners of 05/30/19).

Fourth. From the images provided by the defendant (screen print of the monitor) it is verified that the system allows to obtain images of the entrances of each individual chalet, allowing camera no. 2 to obtain an image of the houses and sidewalk located opposite the community of owners.

SEVENTH: On 07/13/20 the voluntary payment is made by the entity reported for the amount of €1,800, as evidenced in the system computer of this organization.

“That having received this part, dated 06/23/20, Agreement to Start the Penalty procedure, with procedure number referenced above, attached to this Proof of income for voluntary payment of reduction of the amount of sanction (€1,800), leaving the completed file with this”.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, 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 solve this procedure.

II

On 06/23/20, this Agency issued a Resolution Proposal, being notified in a timely manner to the accused party in which a sanction was proposed of €2,000, for the verified infringement of article 5.1 c) RGPD.

In it, he was informed of the following "in accordance with the provisions in article 85.2 of the LPACAP, you are informed that you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of the amount of the same. With the application of this reduction, the penalty would be established at €1,800 euros and its payment will imply the termination of the procedure".

It should be noted that an arithmetical error was detected ex officio in the amount of the proposed sanction, since applying 20% to the proposed sanction in the amount of €2,000, the reduction for prompt payment would be €1,600, instead of the €1,800 indicated in the proposal ($€2,000 \text{ for } 20\% = €1,600$).

The power to rectify that is attributed to the Administration allows it to repair or correct the defects present in an administrative act for whose identification a legal assessment is necessary and that are especially obvious or obvious.

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Article 109.2 of Law 39/2015 (October 1) provides the following: "The

Public Administrations may also rectify at any time,

ex officio or at the request of the interested parties, material, factual or arithmetical errors existing in their actions" (* the bold type belongs to this body).

So where it says "With the application of this reduction, the sanction would be established at €1800 euros and its payment will imply the termination of the process".

It should say "With the application of this reduction, the sanction would be established at €1600 euros and its payment will imply the termination of the procedure"

The denounced party must indicate to this body, in writing, the current account number where the amount should be returned deposited in excess, as well as, where appropriate, indicate the beneficiary thereof.

III

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative

each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or waiver of any administrative action or recourse against the sanction.”

The reduction percentage provided for in this section may be increased regulations”.

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:

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FIRST: TO DECLARE the termination of procedure PS/00353/2019, of
in accordance with the provisions of article 85 of the LPACAP.

SECOND: ORDER the rectification of the arithmetic error established in the Proposal
of resolution dated 02/11/2020 in the terms established in the Foundation
Legal No. 2.

THIRD: ORDER the refund of the amount of €200 in the account number
that contributes to this effect the denounced.

FOURTH: NOTIFY this resolution to the entity denounced COMMUNITY
OF OWNERS R.R.R..

In accordance with the provisions of article 50 of the LOPDGDD, the

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 period of month 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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