

□ Procedure No.: PS/00252/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: C.P. EDIMAR IX (*hereinafter, the claimant) dated August 7,
2020 filed a claim with the Spanish Data Protection Agency. The
claim is directed against A.A.A. with NIF ***NIF.1 (hereinafter, the claimed one). The

The grounds on which the claim is based are as follows:

“There are some video surveillance cameras, installed on the community terrace,
with private use, which have not been authorized by the Community of Owners to
install. The cameras capture communal areas of the terrace, common roof terrace,
being indicated by several owners of the farm, of its existence and disagreement and
to act ex officio, indicating it to the data protection agency of character
personnel” (folio nº 1)

Together with the claim, it provides documentary evidence (Doc. 1) that proves the
presence of the reported devices.

SECOND. On 07/03/20, the claim is TRANSFERRED to the party
denounced so that it manifests what it deems appropriate in law in relation to the
described facts.

THIRD. On 08/07/20, allegations were received from the defendant stating that
following in relation to the facts that are the subject of the complaint:

“As the owner of home 5 (Penthouse) C, I report that the two cameras placed
falls on the terrace of my property are for private and domestic use and comply
with the data protection regulations (...).”

“To obtain said information, direct your request to the legal representative

(Presidency) of the community D. B.B.B. who resides...”.

FOURTH: On December 15, 2020, 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 01/27/21, a written statement is received from the defendant stating the following:

“The area in question is NOT a common element but is PRIVATIVE, it is

Anejo inseparable from the home I own”

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2/5

It is provided as Doc. No. 1 simple note of the house and my property that according to the Property Registry entry has the following description (...)

I have to clarify that the video-monitored area can only affect one owner, specifically to the owner of Penthouse "D", since a vision of less than 10% of your terrace, Don C.C.C. gave me express permission to install the camera (s) of security in my terrace-solarium, even when said cameras captured images, authorization that accompanies this writing as Document evidence no. 2.

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 presented in this AEPD in fe-

cha 08/07/20 through which the following was denounced:

“There are some video surveillance cameras, installed on the community terrace, with private use, which have not been authorized by the Community of Owners to install. The cameras capture communal areas of the terrace, common roof terrace, being indicated by several owners of the farm, of its existence and disagreement and to act ex officio, indicating it to the data protection agency of character personnel” (folio nº 1)

Second. It is identified as the main responsible Mr. A.A.A., which does not deny be responsible for installing the cameras.

Third. It is accredited that the video-monitored area is a privately owned space. denounced, providing a "Simple note" (Proof document No. 1) that proves such ex-trembling

Fourth. The "data processing" of third parties has not been accredited, the purpose being of the camera (s) the security of the house and its inhabitants.

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.

In the present case, we proceed to analyze the claim dated 08/07/20 by means of which the following is transferred as the main fact:

II

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3/5

“There are some video surveillance cameras, installed on the community terrace, with private use, which have not been authorized by the Community of Owners to install. The cameras capture communal areas of the terrace, common roof terrace, being indicated by several owners of the farm, of its existence and disagreement and to act ex officio, indicating it to the data protection agency of character personnel” (folio nº 1).

The art. 5.1 c) RGPD provides the following: The personal data will be:

“adequate, relevant and limited to what is necessary 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 more installed 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 sign informative, indicating the purposes and responsible for the treatment in your case of the data of a personal nature.

In any case, the cameras must be oriented towards the particular space, avoiding intimidating neighboring neighbors with this type of device, as well as controls lar transit areas of the same without just cause.

With this type of device it is also not possible to obtain image(s) of space public service, as this is the exclusive competence of the Security Forces and Corps of the State.

It should be remembered that even in the case of a "simulated" camera, the

It should preferably be oriented towards private space, since it is

considers that this type of device may affect the privacy of third parties, which they are intimidated by it in the belief of being permanently recorded tea.

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.

III

On 01/27/21, this Agency received a written allegation from the complainant.

who denies the facts, arguing "that the cameras are not installed in common element" pointing out that the terrace is private according to the attached documentation. tada that contributes to this effect.

The common element of private use must be recorded in the deeds, in a express or describing it as part of the property.

Let us remember that it will be the owner who must carry out the maintenance work.

maintenance or conservation of all issues related to the issues tions of use in a common element of private use, while it will be the

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4/5

Community who will be responsible for the extraordinary ones of their responsibility, example problems in the forging, asphalt fabric, etc.

If it is decided by the Board of Owners to grant the exclusive use of an ele- definitively, it is necessary that this be approved by unanimity.

half of the owners. For this change it is necessary to leave it in writing before the notary and land registry.

Likewise, a screen impression of what is observed with the camera is provided.

(s) mostly affecting private space.

However, this body wants to point out that the cameras must capture exclusively private space, being recommendable not to create a "friendly zone" of video-surveillance, based on the presumed authorization of third parties (eg, adjoining neighbors), since in such a case it would not be possible to argue "personal and domestic sphere".

The submitted proof of the neighbor's handwritten authorization is rejected. adjoining, since it is not accompanied by the mandatory National Document of identity, nor is the nature of the adjoining terrace accredited.

In this sense, it is recommended that the camera stick to your personal terrace, given that with it it is not possible a priori to create video-surveillance spaces of "doubtful" legal qualification.

It is recalled that a "friendly" solution between the parties, especially if it results in the security of the neighboring building, and there is no access by third parties outside the sale, would be advisable in these cases.

IV

The principle of presumption of innocence prevents imputing an administrative offense when proof of charge accrediting the criminals has not been obtained and verified. facts that motivate the imputation or the intervention in them of the presumed infraction. Applying the principle "in dubio pro reo" in case of doubt regarding a fact concrete and determined, which obliges in any case to resolve said doubt in 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.

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5/5

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

appreciation of the authorities or bodies called to resolve, destroy this

presumption (TCo Auto 3-12-81).

v

According to what has been argued, it has not been possible to prove that the cameras installed

logged "process data of third parties", being addressed to their private space.

and partially to the terrace of an alleged family member of whom he claims to have the con-

feeling.

The parties (complainant and defendant) are reminded of the importance of the rights at stake, and must use this type of device with the caution stated and settling, where appropriate, the controversy by means of an item on the "order of the day" of the Boards of owners regulated in the LPH.

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: ORDER the FILE of this procedure, since it is not accredited all the commission of the offense subject to transfer.

SECOND: NOTIFY this resolution to A.A.A. and REPORT the result of the actions C.P. EDIMAR IX.

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

resorts 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

of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

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