

□ Procedure No.: PS/00272/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: On April 9, 2019, it had entry in this Spanish Agency of
Data Protection a document presented by COMMUNITY OF PROPRIETORS
RRR (hereinafter, the claimant), through which he makes a claim against
A.A.A. with NIF ***NIF.1 (hereinafter, the claimed one), for the installation of a system
of video surveillance installed in *** ADDRESS.1, there are indications of a possible
breach of the provisions of art. 5.1 c) GDPR.

The reasons that support the claim and, where appropriate, the documents
provided by the claimant are the following:

“Place cameras on the facade aimed at common areas, stairs and corridors,
recording all the community members who pass by” (folio nº 1).

SECOND: Prior to the acceptance of this claim for processing, it is
transferred the claimed, in accordance with the provisions of article 65.4 of the Law
Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of
digital rights (hereinafter, LOPDGDD). The result of this action is
describes below.

"It does not make any response to the request of this body"

THIRD: The claim was admitted for processing by resolution of July 10
of 2019.

FOURTH: On October 25, 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: The database of this Agency consulted on 02/13/20 has not been received any allegation in this regard in relation to the system that is the subject of the complaint.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

FACTS

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First. On 04/09/19, this Agency received a claim from the complainant.

by means of which the following is transferred as the main fact:

“Place cameras on the facade aimed at common areas, stairs and corridors, recording all the community members who pass by” (folio nº 1).

The denouncing party accredits the installation of the device on the facade of the property, without the authorization of the group of owners. (Probative Doc. No. 1).

Second. It is identified as the main responsible Mr. A.A.A..

Third. It is proven that he has proceeded to install a device of video-surveillance on the facade of the building, oriented towards transit areas, without any authorization from the Board of Owners.

With the device installed, images are obtained according to the orientation of the of the corridor area through which you access your home.

Fourth. In the informative poster (Doc. Probatorio nº 2) the person in charge is not informed of the treatment, nor is any effective address provided to which, if applicable, to address.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), recognizes each

Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the

LOPDGDD, the Director of the Spanish Data Protection Agency is competent

to start and solve this procedure.

II

In the present case, the claim dated 04/09/19 is examined by me-

gave from which the following is transferred as the main fact:

“Place cameras on the facade aimed at common areas, stairs and corridors,

recording all the community members who pass by” (folio nº 1).

The physical image of a person, in accordance with article 4.1 of the RGPD, is a

personnel and their protection, therefore, is the subject of said Regulation. In article 4.2

of the RGPD defines the concept of "treatment" of personal data.

It is, therefore, pertinent to analyze whether the processing of personal data (image

natural persons) carried out through the video surveillance system denouncing

ciated is in accordance with the provisions of the RGPD.

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The cameras installed by individuals cannot be oriented towards the area

private third parties, obtaining images/sound of third party conversations, by affect their privacy, regardless of the fact that there are less invasive protection measures of the property, if necessary.

The facts described suppose an affectation to article 5.1 c) RGD "The data personal could be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

Individuals who install this type of device are responsible for ensuring that it conforms to current legislation, and must comply with the requirements established also determined in the Horizontal Property Law (LPH).

III

In accordance with the above, the treatment of images through a system subject of video surveillance, to be in accordance with current regulations, you must comply with the following requirements:

- Respect the principle of proportionality.
 - When the system is connected to an alarm center, you can only be installed by a private security company that meets the requirements established in article 5 of Law 5/2014 on Private Security, of April 4.
 - The video cameras will not be able to capture images of the people who are outside the private space where the video surveillance system is installed.
- since the treatment of images in public places can only be carried out, unless there is government authorization, by the Security Forces and Bodies.

Nor can spaces owned by third parties be captured or recorded without the consent of their owners, or, where appropriate, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or in the

inside, it may be necessary to ensure the security purpose the recording of a portion of the public road. That is, cameras and camcorders installed with financial security officers will not be able to obtain images of public roads unless it is indispensable for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said financing will also be collected. Therefore, the cameras could exceptionally capture the minimum portion of the minimum necessary for the intended security purpose.

- The duty to inform those affected provided for in the articles must be complied with.

12 and 13 of the RGPD, resulting from application -by not contradicting the provisions of the aforementioned Regulation-, the manner provided for in article 3 of Instruction 1/2006, of 8 of November, of the Spanish Agency for Data Protection, on the Treatment of Personal Data for Surveillance Purposes through Camera Systems or Videochambers.

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Specifically, at least one distinction must be placed in video-monitored areas. informative display located in a sufficiently visible place, both in open spaces as closed, which will identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in said precepts. Likewise, the information must be kept available to those affected. to which the aforementioned RGPD refers.

- The person in charge must keep a record of treatment activities carried out under its responsibility, including the information to which it makes

reference article 30.1 of the RGD.

- The installed cameras cannot obtain images from private space of third party and/or public space without duly accredited justified cause, nor can affect the privacy of passers-by who move freely through the area. It's not per-mitigated, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without just cause.
- In no case will the use of surveillance practices beyond the en-object of the installation and in particular, not being able to affect the public spaces surrounding spaces, adjoining buildings and vehicles other than those accessing the space. guarded man

In relation to the foregoing, to facilitate the consultation of interested parties, the Agency Spanish Data Protection Agency offers through its website

[<https://www.aepd.es>] access to legislation on personal data protection

regulations, including the RGD and the LOPDGDD (section "Reports and resolutions" / "nor-tive"), as well as the Guide on the use of video cameras for security and other finances. ities, as well as the Guide for compliance with the duty to inform (both available ble in the "Guides and tools" section).

It is also of interest, in case of carrying out data processing of low risk, the free tool Facilita (in the "Guides and tools" section), which through specific questions, it allows to assess the situation of the person in charge aspect of the processing of personal data that it carries out, and where appropriate, generate di-verses documents, informative and contractual clauses, as well as an annex with indicative security measures considered minimal.

IV

The claim is based on the installation of a video-surveillance system with presumed orientation towards common areas, without the authorization of the Board

of owners and without having the duly approved information poster.

The neighbor of the
property referenced above.

In order to install a video-surveillance camera, in the case of the bungalow in
your property, you must inform the President of the Community of

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owners, and in any case it must be oriented towards the door and window.

areas of your property, not affecting common areas (such as transit corridors) given
that the privacy of third parties is affected without just cause.

Likewise, it must have an approved poster, indicating the person in charge
of the treatment, the purpose of the same and an effective address to which you can go,
especially if it is seasonal housing in this country.

The known facts constitute an infraction, attributable to the claimant.

mado, for violation of art. 5.1 c) RGPD, previously described.

In addition, the claimant warns that the property reviewed does not have a sign

in which the presence of the cameras and the identity of the res-

ponsible for data processing, so that interested persons can exercise

cite the rights provided for in arts. 15 to 22 of the GDPR.

Article 83.5 RGPD provides the following: "Infringements of the provisions

The following will be sanctioned, in accordance with section 2, with administrative fines.

amounts of EUR 20,000,000 maximum or, in the case of a company, an amount

equivalent to a maximum of 4% of the total global annual turnover for the year

previous financial agreement, opting for the highest amount:

basic principles for treatment, including conditions for con-

a)

sentiment under articles 5, 6, 7 and 9; (...)".

v

The corrective powers of the Spanish Protection Agency

of Data, as a control authority, are established in article 58.2 of the RGPD. In-

Among them are the power to sanction with a warning -article 58.2 b)-,

the power to impose an administrative fine in accordance with article 83 of the RGPD

-article 58.2 i)-, or the power to order the controller or processor

that the treatment operations comply with the provisions of the RGPD, when

appropriate, in a certain way and within a specified period -article 58. 2

d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article

Article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine

administrative.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation

with what is stated in Considering 148:

"In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than a sanction.

tion by means of a fine, a warning may be imposed. must, however, lend

special attention to the nature, seriousness and duration of the infringement, its character

intentional, to the measures taken to alleviate the damages suffered, to the degree

liability or any relevant prior violation, to the manner in which the authority

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control authority has become aware of the infraction, compliance with measures measures ordered against the person in charge or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

In the present case, it is considered that the community of owners has warned denounced, about the "disagreement" of the Board of owners, being able to do have given at least the precise explanations to avoid denouncing the "facts" to this organism, the cameras according to the provided indications affect common areas and are not duly signposted, which justifies the imposition of a penalty given in the amount of €2,000 (Two Thousand Euros), taking into account the absence of infractions previous tions and the particular nature of the same, but being the defendant aware of the "illegality" of the installation of the camera in question.

The denounced party must clarify the cause/reason for the installation of the camera. camera, as well as its technical characteristics, providing photographs with fe-date and time of what it captures with it in a situation plan, or failing that has proceeded to remove it from the scene of the events (e.g. providing photographs set before/after date and time).

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

The President of the Community of owners or, where appropriate, the Administrator, can deliver a copy of this resolution to the accused, as he must have a

address to communicate with it, or make reliable delivery in the bu-
e-mail account of this, being able once accredited the access to the same or in-
attempted notification, file a new complaint if the accused persists in his con-
offending conduct.

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 Don 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 €2,000 (Two Thousand
euros).

SECOND: NOTIFY this resolution to Don A.A.A. and REPORT the
result of the actions to the denouncing party COMMUNITY OF
OWNERS R.R.R.

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
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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 Data Protection at Banco CAIXABANK, S.A. Otherwise,

it will be collected during the executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary 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 will be until the 5th of the second following month or immediately after.

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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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