

□ File No.: EXP202103881

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Don A.A.A. (\*hereinafter, the complaining party) dated October 19,  
2021 filed a claim with the Spanish Data Protection Agency. the re-  
outcry is directed against C.P. \*\*\*COMUNIDAD.1 with NIF \*\*\*NIF.1 (hereinafter, the  
claimed party). The grounds on which the claim is based are as follows:

“Video surveillance cameras have been installed, without having been approved in Jun-  
Owners and without the information of the person responsible for the treatment in the  
Informative posters of video-surveillance area installed. He indicates that he requested the Minutes where  
of the installation of the cameras to the Administrator of the Estate, and this will re-  
issued a Minutes where allusion is made to the approach of the question relative to the installation  
chambers, but said Act does not indicate that the decision was finally adopted.  
sion” (folio nº 1).

Together with the notification, documentary evidence is provided (Annex I) that proves the presence  
ence of the device in question, as well as the presence of an unfilled sign in the  
essential aspects of the information required in terms of video-surveillance.

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-  
date (s) 10/28/21, 11/15/21, to proceed with its analysis and inform this Agency  
within a month, of the actions carried out to adapt to the requirements  
sites provided for in the data protection regulations.

No response has been received, nor any explanation on the facts exposed has occurred.

THIRD: On December 13, 2021, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant was admitted for processing.

FOURTH: On April 29, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate sanctioning proceedings against the claimed party, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the GDPR.

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FIFTH: Consulting the computer system of this body, there is no date 06/01/22 any clarification regarding the respect or correction in your case in relation to the reported irregularities.

SIXTH: On 06/01/22, a proposed resolution is issued in which a sanction encrypted in the amount of €800 for the infringement of art. 6 RGPD, having proceeded to install a camera system without legally informing the group of owners, lacking an informative label indicating that it is video-surveillance area.

SEVENTH: Consulted the computer system of this body on 07/27/22 there is a double notification, both telematic and postal, to the entity in question, without any response having been produced for the appropriate legal purposes.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

## PROVEN FACTS

First. The facts bring cause of the claim dated 10/19/21 through the

which translates as the main fact the following:

“Video surveillance cameras have been installed, without having been approved in Jun-

Owners and without the information of the person responsible for the treatment in the

Informative posters of video-surveillance area installed. He indicates that he requested the Minutes where

of the installation of the cameras to the Administrator of the Estate, and this will re-

issued a Minutes where allusion is made to the approach of the question relative to the installation

chambers, but said Act does not indicate that the decision was finally adopted.

sion” (folio nº 1).

Second. It is identified as the main responsible Community \*\*\*COMUNI-

DAD.1 with NIF \*\*\*NIF.1.

Third. The mandatory document (Act of the Board) that accredits the agreement has not been provided.

informed sentiment in the installation of the system to the set of neighbors (as) of the in-

piece of furniture.

Fourth. It is proven that the video-surveillance system has deficiencies in

informative signage by not indicating essential aspects such as “responsible” or direction

effective provision for the purposes of exercising rights within the framework of the regulations in force.

## FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-

General Data Protection Regulation, hereinafter RGPD), grants each authori-

control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law

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Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: “The formal procedures ted by the Spanish Agency for Data Protection will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulatory provisions dictated in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.”

II

In the present case, the claim dated 10/19/21 is examined by me- gave from which the following is transferred as the main fact:

“presence of a video-surveillance camera in common areas without having the due authorization from the Board of Owners” (folio No. 1).

When installing security cameras in neighboring communities, it is necessary that the Community of Neighbors has the favorable vote of 3/5 of the total ownership of the owners who in turn represent 3/5 of the share quotas. cipation as developed in article 17 of the Horizontal Property Law (LPH).

You must have the corresponding Act of the Community of owners where such agreement is reflected where they have been informed of the installation of the camera system to the group of community members, as well as at least the purpose and/or responsible for the processing of your personal data.

Notwithstanding the foregoing, the cameras can only capture images of the common areas

communes, not being able to focus on public roads, nor affect adjoining homes, putting in any case losing the rights at stake.

Video surveillance systems involve the processing of personal data.

In accordance with article 1.2 of the RGPD, the regulations in question are intended to object of protecting the fundamental rights and freedoms of natural persons and, in

In particular, your right to the protection of personal data.

In the Statement of Reasons of the LOPDGDD (LO 3/2018, December 5) it is dis- states the following "Together with these assumptions are collected others, such as video-surveillance lance (...) in which the legality of the treatment comes from the existence of a public interest public, under the terms established in article 6.1 e) of EU Regulation 2016/679" (\*bold belongs to this organization).

The facts described above imply an affectation to article 6 RGPD apart from Statute 1st letter e) "...compliance with a mission carried out in the public interest or in the exercise exercise of public powers conferred on the data controller".

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III

Likewise, it is transferred that the system has been installed with a sign without being filled in its essential aspects, by not indicating the "responsible" or the way to exercise the rights regulated in articles 12-22 RGPD.

Article 22 section 4 of the LOPDGDD (LO 3/2018, December 5) provides:

"The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing a computerized device

in a sufficiently visible place identifying, at least, the existence of the treatment to, the identity of the person in charge and the possibility of exercising the rights foreseen in Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code or internet address to this information tion" (\*bold belongs to this Agency).

In accordance with the extensive evidence available in this pro-sanctioning procedure, it is considered that the claimed party has installed a system of cameras without a priori having informed the group of community members of the Building in question, putting up an informative poster that is not filled in its aspects essential.

The known facts constitute an infraction, attributable to the party claimed, for violation of the content of article 6 RGPD, previously cited, as well as article 13 RGPD.

Article 13 GDPR provides:

“When personal data relating to him is obtained from an interested party, the person in charge of treatment, at the time these are obtained, will provide you with all the information tion indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of his or her representative. presenter;
- b) the contact details of the data protection officer, where appropriate;
- c) the purposes of the processing for which the personal data is intended and the legal basis treatment schedule; (...)

IV

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:

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a)

b)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

the rights of the interested parties pursuant to articles 12 to 22 (...)"

In this case, when motivating the sanction, the following is taken into account:

-the nature of the infringement, as it is affecting the right of third parties who have been intimidated by them, having installed themselves in an entrance/exit area of the property (art. 83.2 a) RGPD).

-The intentionality or negligence of the conduct, due to the lack of a proper information poster.

fully formed, indicating the data controller (art. 83.2

b) GDPR).

According to the above, it is considered correct to agree on a sanction encrypted in the amount of €600 (six hundred euros), for the alleged infringement of art. 6.1 e) GDPR, and another sanction encrypted in the amount of €200 for the infringement of article 13 RGPD, upon lack the installed poster of the information on the person in charge of the treatment and the way to exercise the rights regulated in articles 12-22 RGPD, being the su-amount of both infractions: €800 (eight hundred euros), according to a community of owners.

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.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria

tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE C.P. \*\*\*COMUNIDAD.1, with NIF \*\*\*NIF.1, for an infraction

of article 6.1 e) of the RGPD, typified in Article 83.5 of the RGPD, a fine of

€600.

SECOND: IMPOSE C.P. \*\*\*COMUNIDAD.1, with NIF \*\*\*NIF.1, for an infraction

of article 13 of the RGPD, typified in Article 83.5 of the RGPD, a fine of €200.

THIRD: ORDER the claimed entity- C.P. \*\*\*COMMUNITY.1 so that in

Within ONE MONTH from the notification of this administrative act proceed to the

regularization of the system in question, proceeding to provide supporting documentation

tive of such extreme to this organism.

FOURTH: NOTIFY this resolution to the entity C.P. \*\*\*COMMUNITY.1.

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FIFTH: 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 Code 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 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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