

□ Procedure No.: PS/00242/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: Mrs. A.A.A. (\*hereinafter, the claimant) dated March 6, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against the entity \*\*\* COMPANY.1 with NIF \*\*\*NIF.1 (hereinafter,

the claimed). The reasons on which the claim is based are "installation of a system

of video-surveillance cameras without the proper authorization of the board of

owners affecting the rights of third parties" (Writ of Complaint).

"That the decision to install the camera has been taken in a totally

unilaterally by \*\*\* COMPANY.1, without previously informing any of the

affected and without the mandatory approval of the Community of Owners, which

contravenes the provisions of the Civil Code and the Horizontal Property Law"

"In this regard, it should be remembered that according to the provisions of article 397 of the

Civil Code, the alteration of any element co-

of a building without the consent of the other owners of the same"

Together with the claim, it provides documentary evidence (Annex I) that proves the

presence of the camera oriented towards third-party space (community terrace) without

just cause.

SECOND. On 03/31/20, the claim is TRANSFERRED to the

denounced entity, so that it could express what it deems appropriate in relation to the

facts subject to complaint.

THIRD. On 07/15/20, the request for allegations is reiterated in relation to the

alleged illegality of the installed system, as recorded in the database of this Agency.

FOURTH. The database of this AEPD was consulted on 05/11/20, no received any answer, which justifies the initiation of this procedure.

FIFTH: On November 27, 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.

SIXTH: On 12/16/20, this Agency received a letter from the legal representative of the denounced entity, succinctly alleging the following:

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“On said COMMUNITY terrace for PRIVATE USE, to which they only have right to leave the tenants of \*\*\* COMPANY.1, a camera is found without cables or connection to our facilities that possibly was before the acquisition of our premises.

That the appearing party believes that this file comes as a result of a hostile act against her, one of the many to which the residents of the \*\*\*ADDRESS.1, who illegally go out to said terrace since it belongs to the Community of Owners of the \*\*\*ADDRESS.2, being a common element of use proprietary and exclusive to \*\*\* COMPANY.1 which holds ownership of the entire mezzanine which leads to said terrace.

A.A.A. has presented as evidence before the Court photos and recordings made

calls from his window with a hidden camera to the tenants of \*\*\*COMPANY.1. This is his proceeding. Document No. TWO presented by her does not state that there is a HALF OF THE TERRACE FOR BOTH... and in your document N° FOUR, the exit towards the terrace is made out of order”.

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. A claim is received at this Agency on 03/06/20 stating the presence of a security camera, which could be affecting the right of termination zeros, without the consent of the Board of Owners.

Second. The presence of a device on the terrace owned by the company \*\*\*EMPRESA.1, which states that it was installed previously.

Third. It is proven that the device is not operational, fulfilling a mere deterrent function, for security reasons.

Fourth. There is no accredited evidence that any image was obtained with the camera announced, so it has not been possible to demonstrate its operability.

## FOUNDATIONS OF LAW

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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 re-solve this procedure.

II

In the present case, we proceed to examine the Complaint dated 03/06/20 by means of from which the following is transferred as the main fact:

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“Installation of a video-surveillance camera system without having the de-  
authorization of the board of owners affecting the rights of third parties”

“That the decision to install the camera has been taken in a totally  
unilaterally by \*\*\* COMPANY.1, without previously informing any of the  
affected and without the mandatory approval of the Community of Owners, which  
contravenes the provisions of the Civil Code and the Horizontal Property Law”

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  
that are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed  
felled 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 informative sign.

tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each  
personal character.

In any case, the cameras must be oriented towards the particular space, avoiding  
intimidate neighboring neighbors with this type of device, as well as control zo-  
nas of transit of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either.  
co, as this is the exclusive competence of the State Security Forces and Bodies  
ted.

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

should preferably be oriented towards private space, since it is considered that this type of device can affect the privacy of third parties, that they are intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install imaging devices of public space, outside the cases allowed in the regulations.

III

By the accused party, allegations are made on 12/16/20 stating that the camera is not connected, so it does not process any data, fulfilling a dissuasive function.

Therefore, since it is not an operating system, it is not possible to speak of "processing" data processing" fulfilling a dissuasive function, against third parties.

The evidence provided is considered sufficient in the opinion of this body, to confirm the "simulated" nature of the camera that is the object of the complaint, cooperating do the same with this Agency in clarifying the facts.

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Article 89 of Law 39/2015 (October 1) provides: "The investigating body resolves

You will see the completion of the procedure, with a file of the proceedings, without it being necessary. the formulation of the resolution proposal would be necessary, when in the procedural instruction

If it becomes clear that any of the following circumstances are present:

c) When the proven facts do not constitute, in a manifest way, an infringement administrative.

Although in the past the AEPD has sanctioned data controllers

due to the use of this type of device, it is currently understood that the use of cameras simulated does not imply an infringement of the fundamental right to data protection.

In fact, the latest version of his Guide to Using Camcorders for Security and other purposes, the AEPD expressly establishes that Regulation (EU) 2016/679, regarding the protection of natural persons with regard to the processing of data personal data and the free movement of these data and by which the Directive is repealed 95/46/CE ("RGPD"), does not apply in the case of simulated cameras "based on the material impossibility of putting the cameras into operation, due to the lack of all two the technical elements that were necessary for its use".

In any case, it is recommended, if necessary, that measures be taken necessary so as not to affect third parties, who may feel observed by the same more, in such a way that the camera always points towards the particular property or state. establishment that you want to protect.

All this without prejudice to the fact that the "facts" subject to transfer may have repercussion in other areas of law.

#### IV

In accordance with the foregoing, once the allegations and evidence presented were analyzed, das, it can be concluded that the installed system is not operational, which is why it does not it is possible to appreciate infraction in the matter that occupies us, which implies the Archive of the administrative procedure.

The rest of the issues exceed the competence framework of this Agency, de-being silvered in its case in the opportune instances, having to avoid the instrument mentalization of this body for matters far from the framework of the protection of data.

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: ORDER the FILE of this procedure as there is no evidence

gives the commission of any administrative infraction in the matter that concerns us.

SECOND: NOTIFY this resolution to the entity \*\*\*COMPANY.1. and INFO-

MAR of the result of the actions to the complainant A.A.A.

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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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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