

□ Procedure No.: PS/00016/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Don A.A.A. (hereinafter, the claimant) on 07/01/2020 filed claim before the Spanish Data Protection Agency. The claim is directed against the COMMUNITY OF OWNERS *** COMMUNITY.1, (hereinafter, the claimed), C/ ***DIRECTORY.1, with CIF H86313046 "managed by ASESORÍA LISBOA S.L." (Advisory).

The reasons on which the claim is based are that the claimant acquired a parking space registration, the SX-XX, on 02/28/2018 to the MUNICIPAL REAL ESTATE MANAGEMENT COMPANY-RIA DE ALCORCÓN S.A (EMGIASA), in voluntary insolvency proceedings since 05/07/2012, being the CP, creditor in the bankruptcy procedure

It states that the data of your parking space have been published in a place of passage, in some closed bulletin boards of the CP that "can be read by anyone outside to the community", associated with the debt "for no reason" because she was aware of the debt. gives.

Along with the claim, provide:

-In document 3, copies of emails exchanged with the Advisory, from April 2018 in which the claimant tells you that he sends his data so that they can make the payment of the Community and provides all the address, telephone and current account information.

Another one dated 10/15/2019 in which the Advisory Office informs you that your SX-XX place on the day of the purchase had a debt of 120.79 euros from EMGIASA, still pending. You

He asks if he can charge him. There is another email from Advice, dated

10/22/2019, in which he sends the accounts published in April 2018 so that he can see what was

debt.

-To certify that the defendant was aware of the debt, document 4, partial copy

(one sheet) of the minutes of the Ordinary General Meeting of the Community of owners of

02/19/2020, where according to the claimant, comments on the issue of the situation of the debtors

of the promoter EMGIASA. In the copy of the partial record that he provides, it can only be deduced that

attend, you can not see anything else. In ASSISTANTS there are only references to the identification

tion of the spaces, and all the references of the attendees are of parking spaces.

-Photographs showing the location plan of two entrances to the car park with arrows

tiles in red, both according to the claimant with a bulletin board.

-Photograph close up, of half a sheet that shows the figure on an exposed closed plank.

The sheet is entitled debtor owners. It contains a section entitled: square debtors

sold by EMGIASA, several are listed, grouped and identified (about 30

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squares) with a number or letter that precedes the number, that of the claimant appears as the

SX-XX, and the sum total of all of these. At the foot of the sheet are data from the Advisory.

All debtors are for parking spaces. No date or direct is revealed

not by reference. The close-up photo of the document only reveals a lock and

that the leaf is on the other side of a glass, it is not appreciated where it is located.

Along with it, he provides two more photographs. One of the underground access area to the car park-

in which, according to the claimant, the closed planks are located, with a more

close and another further away that is seen to be on public roads, an area that is accessed

underground from the street and the other, an area apparently freely accessible by people.

Nas on the outside. It is not revealed or proven that the sheet that denounces is the one that appears exposed in that external part or date in which the document could be.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant in accordance with the provisions of Title VII, Chapter I, Second section, of the Organic Law 3/2018, of 5/12 of Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD) the claim was transferred on 09/17/2020 to ASESORÍA LISBOA, S.L. and on 12/11/2020 to the CP.

THIRD: On 10/2/2020, a response was received from the Consultancy, stating:

- "Understands that the reported entity is the Community of Neighbors ***COMUNIDAD.1 and not ASESORIA LISBOA" but answers on behalf of the latter since that is how it has been required. They consider that "he has no responsibility whatsoever in the reported facts, among other things because it does not have access to the car park or any rights over the property"

"The Advisory never publishes the accounts of the Communities it manages on the boards of ads. The accounts are sent to the owners directly, all members of the Community, who are informed about the data allowed by the Property Law Horizontal".

In the parking buildings, being a special community (you cannot drop the accounts) a copy of the same is left to the Concierges so that they can be provided to the owners who request them, only to the owners, members of the Community. I never know they put on the boards.

If this has happened on a specific occasion, it will be a mistake by a Concierge, possibly unusual in service. "In any case, neither the entity I represent nor the undersigned have a key to the boards so they cannot be responsible for their publication", it is understood that accidental by mistake of an employee, if it has really been

come to produce this fact.

After receiving the request, he has contacted the Concierges (and the maintenance company that has hired them) to remember the protocol. They have reviewed the boards and there are no published accounts. The concierges ensure that they have always followed the protocol and have never published them.

FOURTH: On 03/04/2021, it is agreed by the Director of the AEPD:

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“INITIATE PUNISHMENT PROCEDURE for the COMMUNITY OF PROPRIETORS

***COMMUNITY.1, C/ ***DIRECTORY.1, with CIF H86313046, for the alleged

violations of articles 32 and 5.1.f of the RGPD, the latter in relation to article 5

of the LOPDGDD, as indicated in articles 83.4.a) and 83.5.a) of the RGPD.

For the purposes specified in the art. 64.2 b) of Law 39/2015, of 1/10, of the Ad-

Common Administrative Law of Public Administrations, (hereinafter, LPACAP) the sanction

tion that could correspond would be a warning.”

FIFTH: The delivery of the postal item was attempted on 03/15 and 16/2021 with the result “absent

“Notice was left in the mailbox” and returned due to surplus not picked up at the office on 03/24/2021. In the

Official State Gazette of Tuesday 03/30/2021 contains the notification announcement of the aforementioned agreement.

No objections were received against the agreement.

SIXTH: On 09/06/2021, a resolution proposal is issued, of the literal:

"That by the Director of the Spanish Agency for Data Protection is sanctioned with

COMMUNITY OF OWNERS *** COMMUNITY.1, C/

warning to

*** ADDRESS.1, with CIF H86313046, for a violation of article 32 of the RGPD, and for

Other infringement of article 5.1.f) of the RGPD, in accordance with article 83.4.a) and 83.5.a)

of the RGPD”

Due to the unsuccessful attempt to notify the claimed party, the Counseling Office is notified as representative, and the procedure is revealed to him as a representative of the claim.

mada, so that within TEN DAYS he can allege whatever he considers in his defense

and present the documents and information that it considers pertinent, in accordance with the

article 89.2 of the LPACAP). The representative accesses the telematic notification on

09/07/2021.

A letter is received from the Advisory on 09/13/2021. in which it indicates:

1-The claimed party correctly receives communications by telematic means, therefore

You must be correctly notified of the start of the file together with the initial letter and

annexes something that has not occurred. The procedure has been started incorrectly violating the rights of the defendant.

2-On “October 2, 2020 I received a letter from the partial complainant because pages were missing

peers and I did not receive the annexes, therefore I cannot argue about the plausibility of the

things that you take for granted. A photograph and a photographed document are easy.

easily manipulated”.

3-They consider that the requested party should be notified correctly so that they can

it gives to allege, otherwise it would cause defenselessness.

4-“In the pleadings, I inform you that accounts are never placed on the boards.

If the intention is to state the contrary and thus support a disciplinary proceeding, at least

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The evidence must be provided to us so that we can examine it.”

On 09/17/2021, the proposed resolution is sent electronically to the respondent.

solution, accessing its content on 09/21/2021 according to the certificate that appears in the tooth. The same day a copy of the file was sent, which is accepted in another shipment for this arranged on 09/21/2021. In the shipment you were informed that the page did not exist two of the file because it was not contained in the claim.

After the time granted, no arguments were filed.

SEVENTH: 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

1) On 02/28/2018, the claimant bought a MUNICIPAL REAL ESTATE MANAGEMENT COMPANY LIARIA DE ALCORCÓN S.A-EMGIASA- the SX-XX parking space. EMGIASA is was in voluntary bankruptcy since 05/07/2012, having debts for payment of quotas to the claimed Community and specifically also on the place acquired by the claimant carrying a debt. The claimant was aware of the debt, according to the manifest That's how it was in the scriptures. In addition, the Respondent's Counsel exchanged co-mail (April 2018, October 2019). with the claimant on different dates, providing them your address information, account number and telephone numbers knowing the debt and obtaining your account number, name and surnames, telephone numbers, identification of the place so that will make the payment, 120.79 euros, according to the mail of 10/15/2019 still pending.

2) The claimant claims that the data of his parking space, that is, S-XX, have been published. posted in a place of passage, on some closed bulletin boards of the CP that "the can be read by anyone outside the community", associated with debt "for no reason at all". no" because he was aware of the debt.

3) To prove the claimant that the sheet containing their personal data, place of parking lot S-XX, were in view of third parties in "those closed planks" belonging to client to the claimed, accompanied a single photograph taken very closely in which he sees a lock on his left side and the half sheet behind glass. The page bears the title debtor owners, in which there is a section that puts debtors squares sold by EMGIASA, appearing grouped and identified (about 30 places) with numbers, or numbers and letters, including that of the claimant the SX-XX, and the total sum of the debts of all them, not individualized and there is no name and surname of this group of places in As for headlines. At the bottom of the sheet there are advertising data of the Consultancy. All the debtors are of parking spaces. No date is revealed that could give an indication. Neither the date of the document nor the date of exposure is known. Neither of the additional photos presented by the claimant are those data viewed to understand the sheet and the date displayed, in the context of what the bulletin board may be. cios of the claimed.

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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 as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this process.

II

The RGPD indicates in its article 1.2. "This Regulation protects the rights and fundamental freedoms of natural persons and, in particular, their right to Protection of personal data"

It is about protecting privacy with regard to the processing of data processed in a document whose responsible, the claimed, must not expose to third parties who are not part of the community and that was displayed on a board accessible to anyone circulate around the environment.

For the purposes of this Regulation, Article 4 defines: "personal data" means any information about an identified or identifiable natural person ("the data subject"); I know

An identifiable natural person is considered to be any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number, location data, an online identifier, or one or various elements of the physical, physiological, genetic, psychic, economic, cultural or social of that person.

In this case, the improvement of the conduct that could lead to the imputation to the defendant, given that the evidence provided is not sufficient to be able to impute the facts to the defendant.

The Constitutional Court has repeatedly declared that Administrative Law Sanctioning are applicable, with some nuances but without exceptions, the inspiring principles of the penal order, being clear the full virtuality of the principles of presumption of innocence. The presumption of innocence must apply without exceptions in the sanctioning system and must be respected in the imposition of any sanctions, since the exercise of ius puniendi in its various manifestations is conditioned to the game of proof and to a contradictory procedure in which can defend their own positions. In this sense, the Constitutional Court, in Judgment 76/1990 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 the reproached conduct; that the burden of proof corresponds to the one who accuses, without anyone is obliged to prove his own innocence; and that any insufficiency in the result of the tests carried out, freely valued by the sanctioning body, must be translated in an acquittal statement. According to this approach, the article Article 28.1 of Law 40/2015, of 1/10 of the Law on the Legal Regime of the Public Sector, indicates: "1. They may only be sanctioned for acts constituting an infraction. administrative natural and legal persons ... that are responsible for them

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by way of intent or fault.

For this reason, the presumption of innocence of the person claimed must prevail in the absence of accreditation of the facts likely to integrate the imputed rates.

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ARCHIVE the sanctioning procedure of warning against the CP

***COMUNIDAD.1, C/ ***DIRIMIENTO.1, with CIF H86313046, for infractions of the articles 32 and 5.1.f) of the RGPD.

SECOND: NOTIFY this resolution to CP

***ADDRESS 1.

***COMMUNITY.1,

w/

THIRD

This Resolution will be made public once it has been notified to the interested parties.

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

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 one month from the

day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

in accordance with the provisions of article 25 and section 5 of the fourth additional provision

of Law 29/19XX, of 13 (07, regulating the Contentious-administrative Jurisdiction, in

within two months from the day following the notification of this act, as

the provisions of 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, it may be

provisionally suspend the firm resolution in administrative proceedings if the interested party

states its intention to file a contentious-administrative appeal. If this is the

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 Registry

Electronic Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through

any of the other records provided for in art. 16.4 of the aforementioned LPACAP. Also

must transfer to the Agency the documentation that accredits the effective filing of the

Sponsored links. 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 suspension

precautionary

Sea Spain Marti

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