

□ Procedure No.: PS/00362/2019

938-051119

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On May 4, 2019, it had entry in this Spanish Agency of  
Data Protection a document in which a claim is made against the  
COMMUNITY OF PROPRIETORS R.R.R., with NIF \*\*\*NIF.1 (hereinafter, the  
claimed), for the installation of a video surveillance system installed in the  
Community of Owners of \*\*\*ADDRESS.1, with indications of a possible  
breach of the provisions of the data protection regulations.

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

A neighbor of the Community files a claim against the President of her  
Community of Owners and the Administration of said Community for the installation  
of video surveillance cameras in the Community, without the agreement of the Board of  
Owners, and without signs. In this claim he provides photographs, dated in May  
of 2019, where at least two cameras appear and there are no posters

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).

On 08/29/19, the requested Community replied indicating which file  
registered in the Agency Registry since 07/05/17 with the code: 2//71861042. The

system has 2 cameras, one of them is false, it was placed with dissuasive effects in the parking to avoid acts of vandalism. The other chamber is located in the access portal to the I build They provide a photo of the camera and its possible field of vision, as well as the poster that warns of video surveillance area.

Correction was requested, so that they could provide the minutes of the Board approving the system installation. On 09/29/19, they answered and provided a copy of the minutes of the meeting of 02/07/2014, in which at the end of section 6 "requests and questions" includes the following point "a video surveillance camera will be placed at the entrance of the garage". In the minutes only the camera of the garage is authorized, of which the CP, in its previous writing said it was false. There is no mention of the portal chamber that It is the one that works, as the Community stated in its previous letter.

THIRD: The claim was admitted for processing by means of a resolution of 11 October 2019.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/6

FOURTH: On January 7, 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 6.1 of the RGPD, typified in Article 83.5 of the RGPD.

FIFTH: Once the aforementioned initial agreement was notified, it was not carried out as it was listed according to the

Post certificate:

It has been Returned to Origin due to Surplus (Not withdrawn in the office) on 01/23/2020, at 8:45 a.m.

Having the following associated information:

1st delivery attempt on 01/14/2020, at 5:23 p.m., has been Absent.

2nd Delivery attempt on 01/15/2020, at 11:35 a.m., has been Absent. was left

Mailbox notice.

On June 18, 2020, receipt was acknowledged for the publication in the BOE of the notification, given the impossibility of notification at home, in accordance with the provided in articles 44, 45 and 46 of Law 39/2015, of 1/10, of the Procedure Common to Public Administrations (LPACAP), and to serve as notification to the interested.

No allegations have been received.

.

## PROVEN FACTS

FIRST: THE COMMUNITY OF OWNERS R.R.R. has installed in the portal of access to the building a video surveillance camera without agreement of the Board of Owners.

SECOND: In the minutes of the meeting of the COMMUNITY OF OWNERS R.R.R., dated 02/07/2014, at the end of section 6 "requests and questions" includes the next point "a video surveillance camera will be placed at the entrance of the garage".

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

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.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

3/6

It is, therefore, pertinent to analyze whether the processing of personal data (image natural persons) carried out through the video surveillance system reported is in accordance with the provisions of the RGPD.

III

In the present case, the claim is examined through the which the installation of two video-surveillance cameras is moved without having the Authorization of the board of owners of the community.

Documentary evidence is attached that proves the installation of the two cameras denounced. The garage camera indicates the Community that is dissuasive, not the installed on the portal and that its installation has not been authorized by the Community of Owners.

Article 6.1 of the RGPD establishes the assumptions that allow it to be considered lawful the processing of personal data:

<<1. The treatment will only be lawful if at least one of the following is met conditions:

- a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

c) the treatment is necessary for the fulfillment of a legal obligation

applicable to the data controller;

d) the processing is necessary to protect the vital interests of the data subject or

of another natural person;

e) the treatment is necessary for the fulfillment of a mission carried out in

public interest or in the exercise of public powers vested in the person responsible for the

treatment;

f) the treatment is necessary for the satisfaction of legitimate interests

pursued by the controller or by a third party, provided that on

such interests do not override the interests or rights and freedoms

fundamental data of the interested party that require the protection of personal data, in

particularly when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to

treatment carried out by public authorities in the exercise of their functions.>>

For its part, article 5.1.c) of the RGPD, regarding the principles of

treatment, provides that the personal data will be “adequate, pertinent and

limited to what is necessary in relation to the purposes for which they are processed

(“data minimization”).” This article enshrines the principle of minimization of

data in the processing of personal data. Assume that such treatment is

adjusted and proportional to the purpose to which it is directed, and the

treatment of excessive data or proceed to the deletion of the same.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

The relevance in the treatment of the data must occur both in the of the collection of the data as well as in the subsequent treatment that is carried out of the data. themselves.

#### IV

The defendant is imputed the commission of an infraction for violation of the article 6.1 of the RGPD, which indicates the causes that legitimize the treatment, as already has previously transcribed. The infringement is typified in Article 83.5 of the RGPD and is classified as serious, for prescription purposes, in article 72.1.b) of the LOPDGDD.

The individuals or Communities of Owners who install this type of dis-positive are responsible for ensuring that it conforms to current legislation, and must comply with the requirements established in the Horizontal Property Law (LPH).

In the present case, the claim is examined through the which translates as the main "fact" the following:

“Installation of a camera in the access portal to the building without having the authorization of the Community of owners.

The facts described may imply an affectation of the content of art. 6 RGPD, by being able to “process personal data” outside the cases contemplated normatively, affecting the right of third parties without just cause.

The person responsible for the installation must be able to certify that the system conforms to regulations in force, adjusting the same to the prescriptions in force in the matter.

The installation of cameras by private individuals is not prohibited in our legal system, although the person responsible for the installation must ensure that it complies with current legislation.

In case of installation in community areas (exterior wall, entrance, etc.) must be brought to the attention of the Board of Owners

By virtue of the provisions of article 58.2 RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers, among which is the power to impose fines, in the event of an infringement of the provisions of the RGPD.

Article 58 section 2 GDPR provides the following:

“Each supervisory authority shall have all of the following powers corrections listed below:

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/6

i) impose an administrative fine under article 83, in addition to or in instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case;

In accordance with the foregoing, the accused party has not accredited before this Agency that the installed system complies with current legislation, specifically that the camera that records access to homes has the authorization of the Community of owners, reason why it is appropriate to declare the infringement of the article 6 GDPR.

Cameras installed by individuals in common areas (art. 396 CC) must have the authorization of the Board of Owners, so that it must to state that the request (authorization) for

be able to install the device in question, justifying the reasons for being able to place the same.

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the COMMUNITY OF PROPRIETORS R.R.R., with NIF \*\*\*NIF.1, for the infringement of article 6 RGD, typified in Article 83.5 of the RGD, a PENALTY sanction.

SECOND: REQUIRE the COMMUNITY OF OWNERS R.R.R., with NIF \*\*\*NIF.1 so that, within ONE MONTH from the notification of this act, certify compliance with the following measures:

-Proof of having the authorization of the Community of Owners to have video surveillance cameras in common places. Otherwise, They will have to remove the cameras.

THIRD

OWNERS R.R.R.

: NOTIFY this resolution to

the COMMUNITY OF

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.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

6/6

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

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)