

□ Procedure No.: PS/00383/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (hereinafter, the claimant) dated June 18, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against COMMUNITY OF OWNERS R.R.R. with NIF

***NIF.1 (hereinafter, the claimed one). The grounds on which the claim is based are
succinctly the following:

"The President of the Community of Owners has given my personal data-
them, through WhatsApp broadcast to a group of the Community of owners
(...), reporting the placement of garbage in an inappropriate place" (folio nº 1).

Together with the claim, it provides documentary evidence (Photographs Annex I) that
confirm what has been stated.

SECOND: On 07/08/20, the claim is TRANSFERRED to the party
demanded so that it can allege in law what it deems appropriate.

THIRD: On 08/27/20, a written statement was received from the accused by
means of which the following is communicated:

"Regarding the information on the alleged extraction and dissemination of images
reports of the complainant via WhatsApp is a "bad faith" by the same, obtained by the cir-
closed room for recording video-surveillance cameras installed in the COMMUNITY
DAD OF OWNERS R.R.R. (...)

That one of the purposes of the processing of personal data re-
caught in the video-surveillance cameras is to corroborate that good use is made by

part of the community members of the common areas and among them the deposit area stands out.

plant waste sites, as well as preventing people from outside the Community from acting

give in to that area”

In short, it has not been proven that the revealed images have been disseminated.

distributed throughout the community, but to a very small and limited group of owners, with the

sole identification purpose exposed (...)

That in the images that have allegedly been communicated without consent

affected, it is impossible to carry out a precise identification of the

person allegedly affected nor, and we consider this (...) of the type of conduct

that he was doing, so in no way can it be inferred that there was

illicit dissemination of personal images.

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Therefore, the presence of the good faith of the Community is observed, since this

would have restricted to such an extent the use of the images as it did NOT proceed

finally report these behaviors to the competent authorities, so

the principle of limitation of the collected data was complied with.

Notwithstanding the foregoing, even understanding that we are in the field

of use of images subject to current regulations on data protection and

that the facts denounced deserve to be considered in attention to an alleged

dissemination without consent, we have sufficiently accredited that the treatment has

been lawful, in consideration and compliance with the conditions established in art.

6 RGPD, and that the complainant would have given his consent for the treatment of

your personal data for the purpose for which they were used.

For all these reasons, I REQUEST the AEPD to consider this document as submitted, together with the documentation that accompanies it ... expressly requesting the FILE of the actions and (...) that this is considered in its case MILD, also determining so that the sanction is in its minimum degree, in attention to the concurrence of attendees clarified in previous points”.

FOURTH: On March 3, 2021, the Director of the Spanish Agency for Pro-Data Protection agreed to initiate a sanctioning procedure against the defendant, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, on the Procedure Common Administrative Procedure of Public Administrations (hereinafter, LPA-CAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: On 04/06/21, allegations were received from the representative of the Community of owners stating succinctly the following:

“With all due respect, we do not find sufficient justification for having committed any infraction, since the account of the facts contained in the proposal for resolution only shows that there has been a use of the images of the system of video-surveillance cameras (...) as such images were broadcast in a WhatsApp group of neighbors of the community itself with an exclusive purpose identify the alleged perpetrator of "irregular" conduct in common areas.

...it is appropriate to report on the causes that motivated the denounced facts, and

Thus, in consideration of the previous points, several conclusions are reached that are not it seems that they have been taken into account in the motion for a resolution (...)

-That the incident had its direct origin in the area of compliance with a purpose of video-surveillance, that is, to denounce the misuse of the deposit area of vegetable waste that is intended to be avoided and controlled by the community (...)

-That the images that “allegedly” WERE COMMUNICATED WITHOUT KNOWLEDGE of the affected, it was on the other hand impossible to carry out a precise identification of the affected person, much less the type of conduct that he was carrying out, so in no way can it be inferred that there was illicit dissemination of personal images.

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As a corollary of the foregoing, it follows that, on the part of the Community of owners, the necessary measures have been adopted at all times to avoid the production of incidents, repeatedly informing all members of the Community of the use of personal data of which it is responsible for the treatment (the Community of owners)

In consideration of the foregoing, we understand that there has been no infringement any in terms of data protection likely to be sanctioned by the AEPD (...)

In anything, it is not possible to identify, if we take the images captured individually, to the person whose images have been captured, and allegedly misused.

For all these reasons, we ask the AEPD to consider the document presented, serves to admit it, and considers it presented for the appropriate purposes, Allegations to the Resolution Proposal (...) the Archive of the proceedings is Decreed (...)

SIXTH: Attached as an annex is a list of documents in the process.

SEVENTH: On 05/28/21, a "Proposed Resolution" was issued in which violation of art. 5.1 b) RGPD, having proceeded to spread the images obtained from the video-surveillance camera system in a group of WhatsApp, offense typified in art. 83.5 a) RGPD, proposing a sanction of Warning, after assessing the circumstances of the case.

EIGHTH: On 06/17/21 allegations are received from the Community of owners- El Pichón- arguing the following:

"The contested resolution proposal supports its inadmissibility on two paragraphs of explanatory text, after exposing and developing a series of facts complete and concepts consigned in the data protection regulations.

Regardless of the defenselessness suffered by such an act, taking into account that the Agency itself recognizes that the purpose of the processed images was limited appointment, and that, furthermore, no person was identified in the WhatsApp messages.

App, the instructor has interpreted the totality of the circumstances and facts communicated two from a prism of lack of motivation and inconsistency with respect to the allegations previously presented, since until that paragraph, we can easily prove the use of generic legal constructions and not adjusted to the specific case.

That said, having no evidence whatsoever to prove that, indeed, the organ-decision-maker has carried out the analysis of the documentary provided that alludes to having practiced, it is inferred that none of these tests has even been reviewed or had into account when qualifying and subsuming the facts denounced by the neighbor de-complainant within the infractions foreseen by the current regulations on the subject of Data Protection.

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Thus, based on the aforementioned circumstances, it is obligatory to conclude that there has been a procedural defect in the course of the claim raised, that It has also been decisive in the defenselessness that has occurred to us (article 48.2 Law 39/2015).

Of the actions carried out in this procedure and of the document information in the file, the following have been accredited:

PROVEN FACTS

First. On 06/18/2020, a claim is received from the claimant through the which translates as the main fact the following:

"The President of the Community of Owners has given my personal data- them, through WhatsApp broadcast to a group of the Community of owners (...), reporting the placement of garbage in an inappropriate place" (folio nº 1).

Together with the claim, it provides documentary evidence (Photographs Annex I) that confirm what has been stated.

Second. It is accredited as the main responsible COMMUNITY OF PROPERTY TARIOS R.R.R.

Third. It is accredited that the images obtained from the video-surveillance system were disseminated through a WhatsApp Group in order to identify the main responsible for "irregular" conduct in the Community of owners.

Fourth. It is accredited that the system has an informative poster(s) in the vi- possible indicating that it is a video-monitored area.

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 resolve this procedure.

II

Before going into the substance of the matter, it is convenient to assess the "complaints" put forward by the party complained against, where it incorrectly speaks "resolution proposal" combated solution supports its inadmissibility" when it confirmed the inadmissibility fraction described for improper use of the images obtained from the video-surveillance, without any transfer being made to the competent authority, but to a Group WhatsApp, which admits little discussion regarding the reality of the facts.

The defendant's arguments focus on minimizing the conduct, as well as this aspect that is taken into account by this body, when proposing in its moment a sanction of Warning, taking into account these circumstances

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liability, which otherwise would have ended with a sanction of a pecuniary nature of a considerable amount.

The respondent party complains of a certain "copy and paste" that on the other hand does not specific in which paragraphs such action has been carried out, nor to what extent have they produced the helplessness that it intends to argue, nor does it indicate how they deviate from the facts, beyond a "subjective" assessment.

Contrary to what has been stated, even articles of the Property Law are cited.

Horizontal, to seek a "legal" accommodation to the conduct of the President of the

mentioned Community, even ignoring the fact that there is no legal precept that allows the “arbitrary use” of system images, through their diffusion in a Group of certain WhatsApp privacy.

The mention of Judgments of the National High Court far from the argued “co-pia y pas” support the “proposal” for a Resolution based on established and reiterated criteria by the jurisdictional bodies, thus motivating the pronouncement of this body, precisely to avoid a response away from the "facts" object of denunciation, which we insist do not admit discussion.

This body cannot share the complainant's complaint of lack of analysis of their arguments, since they have been analyzed, leading all to justify the use of images outside the cases permitted by law, even that the purpose was to accredit the alleged person responsible for an uncivil or criminal behavior zás constituting an administrative infraction.

In the allegations dated 04/06/21, the facts are explained by the respondent “misuse of the plant residue deposit area” by an owner of the Community, which on the other hand are not "alleged" as asserted but real because the images obtained were disseminated through a WhatsApp Group, pro-yielding even to take the data of the vehicle.

“...in any case, the license plate that appears photographed is isolated. gives...”

Therefore, the facts do not admit any discussion, nor are the arguments grumbles distort the opposite, especially when they are not denied, being the rest of arguments aspects valued by this Agency as mitigating circumstances which were reflected in the proposed resolution, which corresponds to the literal of the last paragraph of the FJV of this resolution.

The claim confuses the existence of consented authorization in the installation

tion of the cameras, which may have been legally authorized by the group of the neighbors, with the way of using their images, disseminating through a WhatsApp Group, when the data protection regulations do not leaves no doubt in the provision of the corresponding competent authority tooth, needless to say is not a set of neighbors (as).

As verified in the database of this Agency, the allegations made

The cases are dated 08/27/20 (first allegations), 03/26/21 (second allegations),

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tions), 04/06/21 (third allegations) and 06/17/21 (fourth and last allegations), all

all of which together with the documentation provided have been subject to analysis by the Procedure instructor.

In the last brief of allegations, it only provides a partial copy of the Act of

date 09/29/20 by which a new Board of Directors of the COMMUNITY is constituted

OF OWNERS R.R.R. (Doc no. 1).

The respondent is reminded that the lack of an informed cartel is not being prosecuted.

(infraction of art. 13 RGPD Doc. nº 1), nor the support of the Ownership Board.

to the installation of the cameras (doc. nº 7), so it goes without saying that it was not necessary

necessary to enter into assessing issues not related to the "facts" that are the object of the presentation.

procedure, no matter how much it reiterates them in the various briefs presented.

So the proposed resolution was consistent with the "theme decided"

dendi" (main issue) without being able to speak of defenselessness about the lack of mention.

tion on implicit issues or that are not subject to prosecution (vgr. SAN

12/05/02).

Lastly, the second Request of this document is not evaluated, since not having finished the procedure, which is remembered is with the Resolution of the same, it is not possible to file or admit any appeal subsidiarily, remembering the consequences of articulating the same with "recklessness" influencing aspects that are mind resolved in a motivated manner by this Agency.

In such a way that the complaint put forward is dismissed for the reasons stated, remembering in the future that there is no defenselessness, since the "facts" are clear (by not denying claimed), has been able to argue in law what it has deemed appropriate, va-freely performing the same by the instructor of the procedure, without specifying any mention beyond a generic mention of articles 47-48 Law 39/2015 is carried out in relation to defenselessness, nor is it clear to this Agency the document moment(s) that has not been valued in relation to the facts denounced.

III

In the present case, we proceed to examine the claim of date of entry into this AEPD 06/18/20 through which the following is transferred as the main event:
tea:

"The President of the Community of Owners has given my personal data-them, through WhatsApp broadcast to a group of the Community of owners (...), reporting the placement of garbage in an inappropriate place" (folio nº 1).

The facts are concretized in the use of the images of the camera system. video-surveillance cameras of the Community of Owners, images that were di-merged into a WhatsApp group of neighbors from the community itself with the purpose exclusively to identify the alleged perpetrator of "irregular" conduct in communal areas.
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The images generated by a security system constitute a character data personal, so its treatment is subject to data protection regulations.

The President is one of the governing bodies of the Community of owners, together with the Board of owners, vice presidents (if any according to the statutes), the Secretary and the Administrator (art. 13 LPH).

Despite the lack of clarity in this regard, being a matter of doctrinal debate

Finally, the President of the Community is a qualified manager of the same, co-responding “a) Ensure the good regimen of the house, its facilities and services vices, and for this purpose make the appropriate warnings and warnings to the holders lares.” (art. 20 LPH).

The installation of video cameras in a community of neighbors must be done with the aim of avoiding vandalism or access by people outside the farm.

Since the installation of surveillance cameras collides with a fundamental right fundamental, its installation must be done respecting the principle of proportionality. I know It is an undetermined legal principle that the Constitutional Court explained in the Judgment 207/1996 as “a common and constant requirement for the constitutionality of any restrictive measure of fundamental rights.

Article 22 section 3 of the LOPDGDD (LO 3/2018) provides the following:

“The data will be deleted within a maximum period of one month from its collection.

tion, except when they had to be kept to prove the commission of acts that threaten the integrity of people, goods or facilities. In such a case, the

Images must be made available to the competent authority in a

maximum period of seventy-two hours from the knowledge of the existence

recording. The obligation to block will not apply to these treatments.

envisaged in article 32 of this organic law" (* the bold type belongs to this organism).

The art. 5.1 b) RGPD provides: "Personal data will be:

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those purposes; according to article 89,

paragraph 1, the further processing of personal data for archiving purposes in-

public interest, scientific and historical research purposes or statistical purposes are not considered

will be incompatible with the original purposes ("purpose limitation");

So, from the behavior described, it can be inferred that the diffusion of the images to

through a WhatsApp group of the Community does not seem the most suitable way to

the identification of the presumed person responsible for an "irregular" conduct in the Co-

community of owners, this being a means that does not allow a rigorous control in

data processing.

The regulations in force are characterized by strict "confidentiality" in the persons

responsible in its case in the access to the images, which is limited to the responsible

ble authorized by the Community of owners, without allowing the transfer to persons

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unauthorized, as would be the case of the rest of the community members of the property, assuming

do even the risk of further dissemination outside the WhatsApp group.

IV

In accordance with the objective evidence available in this proceeding, sanctioning procedure, it is considered that the defendant (President Community of Pro-owners) proceeded to spread the images of the defendant in a WhatsApp group restricted in order to discover the alleged perpetrator of certain behaviors "irregular" that had been produced in it.

In these cases, in which the purpose of the processing involves the identification of persons, it can be assumed that the data controller or any other person involved has or may have means that "can be reasonably used", to identify the interested party. In fact, holding that natural persons are not identical identifiable, when the purpose of the treatment is precisely to identify them, it would be a flagrant contradiction.

"This is especially pertinent in the field of video surveillance, in which controllers often claim that identification is only occurs in a small percentage of cases and that, therefore, until it occurs duces identification in those few cases, no personal data is really processed. nal. As the purpose of video surveillance is, however, to identify persons that appear in the video images in all those cases in which that identity notification is considered necessary by the data controller, it must be considered consider the use of the system itself for the processing of data on identified persons. even if some of the people filmed are not identifiable in practice.

AC"

In the case at hand, the fact that the person allegedly responsible for the conduct that were intended to reprimand was not identified by the group of neighbors (as) of the Group of WhatsApp does not exclude the "processing of data" associated with an identifiable person, Therefore, the main argument put forward by the defendant must be dismissed. gives.

The images obtained should have been made available to the Authority competent for the purpose of carrying out the investigative work deemed necessary. arias, not corresponding to the President of the Community to supply the power of the themselves when prosecuting the facts or investigating the alleged perpetrator of the same. mos.

Article 22 section 3 of the LOPDGDD provides the following:

“The data will be deleted within a maximum period of one month from its collection.

tion, except when they had to be kept to prove the commission of acts that threaten the integrity of people, goods or facilities. In such a case, the Images must be made available to the competent authority within a period maximum of seventy-two hours from the knowledge of the existence of the recording”

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The known facts constitute an infraction, attributable to the defendant, for violation of the content of art. 5.1 b) GDPR.

Article 83.5 RGPD provides the following:

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“Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, alternatively, being from a company, of an amount equivalent to a maximum of 4% of the volume overall annual total turnover of the previous financial year, opting for the greater amount:

a)

the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

SAW

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation provides in your art. 58.2 b) the possibility of sanctioning with a warning, in relation to what stated in Recital 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. You must, however, pay

Special attention is paid to the nature, seriousness and duration of the infraction, its character intentional or not, to the measures taken to alleviate the damages suffered, to the degree of responsibility or any relevant prior violation, the manner in which the control authority has become aware of the infraction, to the fulfillment of 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, the absence of previous infringements, the intentionality of the conduct, given that what he intended was to reprimand a conduct "uncivic", as well as the little impact on the diffusion of the images when limited to a very small group of people and the absence of any benefit in the "treatment of the same to propose a warning sanction.

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 the COMMUNITY OF PROPRIETORS R.R.R., with NIF ***NIF.1,

for an infringement of Article 5.1.b) of the RGPD, typified in Article 83.5 of the

RGPD, a sanction of WARNING.

SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

R.R.R.

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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

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

counting 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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