

Procedure No.: PS/00346/2018

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before

HOTEL ROYAL AL ANDALUS S.A., by virtue of a claim filed by Mr.

A.A.A. and based on the following:

BACKGROUND

FIRST: On 04/23/2018, the Spanish Agency for the Protection of

Written data from D. A.A.A. (hereinafter the complainant), in which he denounces

HOTEL ROYAL AL ANDALUS, S.A. (hereinafter HRAA), by means of which

manifests the existence of installation of video-surveillance cameras in the aforementioned

center at certain points of the same in a disproportionate way and

violating the right to privacy.

Along with your written complaint, you provide photographs of the location of the

cameras and surveillance points.

SECOND: HRAA was required by resolution of this Agency dated

04/23/2018 to certify in the reference file E/03448/2018, in

in relation to the actions carried out to adapt the installation of

video surveillance of the aforementioned center to the requirements set by the regulations of

Data Protection.

HRAA in writing of allegations of 10/18/2018 answers this body, indicating

that can certify that the surveillance installation complies with the regulations of

Data Protection; duly signposted; that the cameras record exclusively

the property of the Hotel and in common areas and entrance and exit to the work center,

step for suppliers and customer enjoyment areas.

THIRD: On 12/03/2018, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure for the presumed infraction of the article 5.1 c) of the RGPD, in accordance with the provisions of article 58 section 2 of the same norm, considering that the sanction that could correspond would be WARNING, without prejudice to what may result from the investigation.

FOURTH: On 01/18/2019, the representation of HRAA presented a written arguments, formulating, in summary: that having been notified of the initial agreement sanctioning procedure and informed about the alleged deficiencies denounced in the surveillance system installed, these have been corrected having The location of the camera installed in the staff dining room has been modified.

Of the actions carried out in this proceeding, there have been accredited the following:

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PROVEN FACTS

FIRST: On 04/23/2018 there is a written entry in the AEPD from the claimant in which complaint to HRAA for the installation of cameras of the video surveillance system in dependencies of the center violating the right to privacy, providing images of, among others, the cameras installed in the staff dining room, the toilet door intended for staff, corridors, etc.

SECOND: HRAA in writing dated 10/18/2018 states that the company complies with the regulations on data protection, attaching photographic material detailing the place where the cameras of the system are installed, with their corresponding informative posters, not including images of toilets, changing rooms,

etc., although including photographs of camera(s) that collect images of the dining room of personal.

THIRD: HERRA in writing dated 01/18/2019 informs that the location of the camera(s) installed in the staff dining room providing photographs of different accesses to the center, but not those that captured images of said dependence.

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 art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

II

The third transitory provision of the LOPDGDD establishes: "Regime transitory procedures:

1. The procedures already initiated at the entry into force of this organic law shall be shall be governed by the above regulations, unless this organic law contains provisions more favorable for the interested party.

Article 63.2 of the LOPDGDD indicates: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

In the first place, it is worth remembering what are the requirements that the processing of images through video surveillance systems to comply with

with current regulations:

III

- Respect the principle of proportionality.
- When the system is connected to an alarm center, you can only be installed by a private security company that meets the requirements

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contemplated in article 5 of Law 5/2014 on Private Security, of 4 april.

- The video cameras will not be able to capture images of the people who are outside the private space since the treatment of images in public places can only be carried out, where appropriate, by the Forces and Security forces. Spaces cannot be captured or recorded either. property of third parties without the consent of their owners, or, where appropriate, of the people who are in them.

- The duty to inform those affected provided for in article 12 of the RGPD 2016/679, of April 27, 2016, in the terms referred to both in the aforementioned article, as well as in articles 13 and 14 of said regulation, resulting of application -by not contradicting the provisions of the aforementioned Regulation-, the manner provided for in article 3 of Instruction 1/2006, of November 8, of the Spanish Agency for Data Protection, on Data Processing Personal for Surveillance Purposes through Camera Systems or Video cameras (Instruction 1/2006, of November 8, of the Spanish Agency

Data Protection).

Specifically, it must:

1. Place at least one informative badge in the video-monitored areas

located in a sufficiently visible place, both in open and closed spaces.

In accordance with the provisions of articles 13 and 14 of Regulation (EU) 2016/679,

of April 27, 2016, in the aforementioned informative badge, you must

identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided for in said precepts.

2. Keep available to those affected the information referred to in the

cited Regulation (EU) 2016/679, of April 27, 2016.

HRAA is charged with the violation of article 5 RGPD, Principles related to the treatment, which provides the following:

IV

"1. The personal data will be:

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

On the other hand, the new Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights (LOPDGDD), in its article 22, Processing for video surveillance purposes, section 1, states that:

"1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of persons and goods, as well as their installations.

And in its section 8 it states that: "8. The treatment by the data employer obtained through camera or video camera systems is subject to the provisions in article 89 of this organic law".

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Article 89 "Right to privacy against the use of communication devices

video surveillance and sound recording in the workplace", in section 2,

determines that:

"two. In no case will the installation of video recording systems be allowed.

sounds or video surveillance in places intended for the rest or recreation of

workers or public employees, such as changing rooms, toilets, dining rooms and

analogues".

The facts denounced took the form of the installation of a system of

video surveillance with cameras in different dependencies of the HRAA, some of the

which did not contain the proper signage and violated the regulations regarding

data protection and the right to privacy of workers.

According to the statements made by the representative of the

responsible for the establishment denounced after the agreement to start

this sanctioning procedure, the new installation of the camera/s has been carried out

of video surveillance in spaces that are intended to be protected, ceasing any

affectation of the right of workers in the places destined for their rest or

recreation.

v

Article 83.5 a) of the RGPD, considers that the infringement of "the principles

basic for the treatment, including the conditions for the consent in accordance with

of articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the

mentioned article 83 of the aforementioned Regulation, with administrative fines of €20,000,000 maximum or, in the case of a company, an equivalent amount at a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount.

The LOPDGDD in its article 72 indicates: "Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679"

However, article 58.2 of the REPD provides the following: "Each authority

of control will have all the following corrective powers indicated below:

continuation:

sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of

this Regulation;

(...)

b)

(...)

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Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates

in its article 58.2 b) the possibility of going to the warning to correct the processing of personal data that do not meet your expectations. About when it is appropriate to opt for one or the other route, the application of article 83 of the RGPD or the warning measure of article 58.2.b), the rule itself in its Considering 148 of Regulation 2016/679 which establishes the following:

“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 sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

SAW

It should be noted that after the request made to the claimed party, accredited that the installed video surveillance system has been modified in a way that the camera(s) that violated the regulations on the protection of data and that were the subject of controversy have been reinstated, providing evidence documentary that confirms its correct installation, especially the one that captured the images of the workers in the unit destined to be the dining room of the themselves.

In the same way, the adoption of any specific measure is not urged to take, since the adoption of measures for the correct installation of the video surveillance system and its adaptation to the new principles that the GDPR.

To conclude, taking into account the absence of intentionality, the absence of damages, the behavior and the measures adopted by the person in charge of the treatment further attenuate his culpability in the present case, for which reason It is appropriate to sanction with a warning.

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 HOTEL ROYAL AL ANDALUS S.A., with NIF A81479107, for an infringement of article 5.1 c) of the RGPD, sanctioned in accordance with the provisions of the article 83.5 of the aforementioned RGPD and, described as very serious in article 72.1 a) of the LOPDGDD, a penalty of WARNING in accordance with the provisions of the article 58.2.b) of the RGPD.

SECOND: NOTIFY this resolution to HOTEL ROYAL AL ANDALUS S.A.

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and, according to art. 77.2 of the RGPD, INFORM the claimant about the result of the claim.

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.

114.1 c) of the LPACAP, 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.

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

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by
writing addressed to the Spanish Agency for Data Protection, presenting it through
Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-
web/](https://sedeagpd.gob.es/sede-electronica-web/)], or 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 proving the effective filing of the contentious appeal-
administrative. If the Agency was not aware of the filing of the appeal
contentious-administrative within a period of two months from the day following the
notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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