

□ Procedure No.: PS/00358/2019

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and in

based on the following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on April 25, 2019 filed

claim before the Spanish Data Protection Agency. The claim is directed

against GESTHOTEL ACTIVOS BALAGARES S.L., with NIF B55230155 (hereinafter, the reclaimed).

The reasons on which the claim is based are that the respondent sent to the address of the Hotel Los Balagares and to the delegates of union staff of the UGT a private letter to that they knew the situation of harassment that he suffered.

This letter included data relating to the medical condition he suffered from ((...)).

The affected party states that the management of the center and the delegate of the USIPA union (at does not belong) called a meeting in March 2018 with the rest of the co-workers in order to read the content of the letter he had sent the claimant.

SECOND: It is about making the claimed party aware of this claim on

June 27, 2019, requiring you to submit to this Agency, within a period of one month,

information on the response given to the claimant for the facts denounced, as well as the causes that have motivated the incidence and the measures adopted to adapt its

"Privacy Policy" to article 13 of Regulation (EU) 2016/679 of the Parliament European and Council of April 27, 2016 (RGPD).

The respondent states that no direct allusion has ever been made nor has data been revealed of a sensitive nature related to the claimant's medical condition.

In fact, the only direct transcription of the content of the letter was the one that appears in the minutes of the assembly and it is the one that refers to the situation of isolation that says suffer the denouncing worker.

This claim is part of the climate of discomfort and labor conflict that has come going through the company for many years and whose background, circumstances and consequences are well known by all the personnel of the hotel.

Therefore, at no time was any information or circumstance revealed that was not already public, notorious and known by all attendees because it is an issue that derives directly from the existence of said conflict, of which everyone is aware, and that the complainant worker had already manifested openly on previous occasions.

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The circumstances to which reference was made are not private data or of a personal nature. doctor and that the only objective that was intended was to find a solution to the conflict that had raised and to attend to the request that she herself had transferred to the management and to the legal representation of workers.

Regarding the measures adopted, the entity that has chosen to include this issue explains on the agenda of the next compliance committee, it has been agreed to review the protocols implemented in terms of data protection and regulatory compliance to that every worker, delegate and/or person in charge has no doubts about how to act before a similar situation.

Similarly, the protocols adopted will be reinforced to prevent, in the future,

faced with a similar situation, there may be doubts about how to proceed and thus reduce the risk that at some point an incident such as the one described in the claim.

Lastly, a whole series of controls are being carried out, planned with a periodicity quarterly, to verify the degree of implementation and compliance with regulations by part of the company.

Likewise, this AEPD informs the union UNIÓN DE SINDICATOS INDEPENDENTS OF THE PRINCIPALITY OF ASTURIAS this claim on the 27th of June 2019, requiring you to submit to this Agency, within a period of one month, information in this regard, pointing out that the only intention of citing the complainant was solve her supposed problem of harassment to which she is obliged as a union representative since if the opposite were done, that is, ignoring the complaint would be a failure to functions and an intolerable helplessness to a worker by a union delegate.

THIRD: On December 20, 2019, 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.f) of the RGPD, typified in article 83.5 of the RGPD.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, it stated that the motivations of the respondent for filing your claim go beyond the alleged violation of your privacy and the right to the protection of your personal data, since its objective was not to put in knowledge of the company no diagnosis or data of a medical nature, but report the alleged situation of harassment that, according to her, she suffered at work.

At the meeting, he only summarized and referred to the part of the letter in which the complainant says that many colleagues treat her humiliatingly, they keep her isolated, cornered and do not say a word to him, ignoring at all times the references to what says anxiety and stress and the fact that it is immersed in a process of incapacitation -

temporary, despite being an obvious fact considering the long absence of his job.

The respondent entity considers that the fact of summarizing the accusations contained in the letter does not imply the disclosure of any personal data to third parties, much less, of any any data related to your medical history.

FIFTH: On January 20, 2020, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigative actions, from file E/05630/2019.

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In view of everything that has been done, by the Spanish Agency for the Protection of Data in this procedure are considered proven the following,

FACTS

FIRST: The respondent states that the respondent sent to the hotel address the Balagares and the UGT union staff delegates a private letter so that were aware of the situation of harassment that he was suffering, that letter included data relating to the medical condition that he suffered from ((...)).

The affected party states that the management of the center and the union delegate USIPA (to which it does not belong) called a meeting on February 8, 2018 with the rest of co-workers in order to read the content of the letter he had forwarded the claimant.

SECOND: The respondent states that no personal data of the claimant to third parties nor any data related to his medical history, since in the

meeting of February 8, 2018, only summarized and referred to the part of the letter in which the claimant affirms that her colleagues treat her humiliatingly, the isolated, cornered and do not speak to him, ignoring at all times the references about the anxiety and stress that it causes, although it is a fact known by the entire workforce that is immersed in a process of temporary incapacitation, taking into account the long absence from his job.

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 what is 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

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5 of the RGPD establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

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,

section 1, further processing of personal data for archiving purposes in the interest

public, scientific and historical research purposes or statistical purposes shall not be considered

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

c) adequate, pertinent and limited to what is necessary in relation to the purposes for

those that are processed ("data minimization");

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d) accurate and, if necessary, updated; all measures will be taken

reasonable for the erasure or rectification without delay of the personal data that is

inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties during

no longer than is necessary for the purposes of processing the personal data; the

personal data may be kept for longer periods as long as they are processed

exclusively for archival purposes in the public interest, scientific research purposes or

historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to

the application of the appropriate technical and organizational measures imposed by this

Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term of conservation");

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against their

accidental loss, destruction or damage, through the application of technical measures or

appropriate organizational measures ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions

in section 1 and able to demonstrate it ("proactive responsibility")."

III

Although it has not been provided by the respondent, the action protocol of the

company for cases of workplace harassment, it is considered proven that the letter from the

employee at the meeting convened by the union and which is therefore communicated to all

attendees the reported situation.

Therefore, the facts denounced, that is, publicly reading a private letter of the claimant so that they knew the situation of harassment that she suffered, supposes the violation of article 5.1 f) of the RGPD, which governs the principles of integrity and confidentiality of personal data, as well as the proactive responsibility of the data controller to demonstrate compliance.

IV

Article 72.1.a) of the LOPDGDD states that “according to what is established in the article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe the three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

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

v

Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

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

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d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a certain way and within a specified period;

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

SAW

This infraction can be sanctioned with a fine of €20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the volume of total annual global business of the previous financial year, opting for the one with the highest amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established by article 83.2 of the RGPD:

As aggravating the following:

☐ In the present case we are dealing with unintentional, but significant, negligent action.

goes (article 83.2 b)

☐ Basic personal identifiers are affected (name, surnames, domicile), according to article 83.2 g)

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE GESTHOTEL ACTIVOS BALAGARES S.L., with NIF B55230155

for an infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, a fine of €15,000.00 (FIFTEEN THOUSAND euros).

SECOND: NOTIFY this resolution to GESTHOTEL ACTIVOS BALAGARES

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THIRD: Warn the sanctioned person that he must make the imposed sanction effective once that this resolution is enforceable, in accordance with the provisions of art. 98.1.b)

of Law 39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations (hereinafter LPACAP), within the voluntary payment period established in art. 68 of the General Collection Regulations, approved by Real Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of 17 December, through its entry, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Spanish Agency of Data Protection at Banco CAIXABANK, S.A. Otherwise, it will its collection in executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment www.aepd.es

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voluntary will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the payment term will be until the 5th of the second following month or immediately after.

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 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 29/1998, of July 13, regulating the Contentious-administrative Jurisdiction, within two months from the day following the notification of this act, according to 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, the firm decision may be provisionally suspended 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 Law 39/2015, of 1

october. You must also transfer to the Agency the documentation that accredits the

effective filing of the contentious-administrative appeal. If the Agency did not have

knowledge of the filing of the contentious-administrative appeal within two

months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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