

Athens, 10/06/2021 Prot. No.: G/EX/1459 DECISION 24/2021 (Department) The Personal Data Protection Authority (hereinafter "the Authority") met as a Department via video conference on Wednesday 05-26-2021 at the invitation of its President, in order to examine the case referred to in the present history. The Deputy President, Georgios Batzalexis, who was in the way of the President of the Authority, Constantinos Menoudakos, the regular members Konstantinos Lambrinoudakis, as rapporteur, Spyridon Vlachopoulos and the alternate member Grigorios Tsolias in place of the regular member, Charalambos Anthopoulos, who, although legally summoned, appeared in writing, did not attend due to disability. At the meeting, by order of the President, Leonidas Roussos, expert scientist - auditor, was present as an assistant rapporteur. Irini Papageorgopoulou, an employee of the Administrative Department of the Authority, attended as Secretary. No. was submitted to the Authority. prot. C/EIS/3661/22-05-2019 complaint according to which in the premises of the hotel of the general partnership under the name "MARIA & DESPOINA KOUSATHANA O.E." and distinctive title "Grand Beach" (hereinafter "processor"), a video surveillance system was installed during the period of the complainant's work. The complainant was employed by the company "MARIA & DESPOINA KOUSATHANA O.E." on ...2017 to ... for a period of time ... to ...2017. The video surveillance system in question was installed without meeting the legal operating conditions and through the system it was possible to monitor the kitchen area and the workers. The complaint refers to a specific incident, 1 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr), from which it appears that one of the complainants supervised the kitchen area and did relevant recommendations to employees for the periods they did not work. Characteristically, according to the complainant, A called them to the reception and announced that she "sees them sitting". Following this complaint, the Authority sent to the controller the documents No. C/EX/3662-1/14-06-2019 and C/EX/3661-2/17-10-2019, with the which informed him about the relevant complaint that had been submitted to the Authority. The data controller replied with the no. prot. C/EIS/1463/21-02-2020, where he briefly supports the following: The video surveillance system was installed for the purpose of protecting persons and goods for a period of 6 months, namely from ...2017 to ...2017. In particular, since the workplace was the kitchen, it was considered appropriate to install cameras in order to avoid the risk of fire that could endanger the lives of workers. The data controller did not know that it was necessary to notify the Authority about data processing through a video surveillance system and for this reason he had not fulfilled the relevant obligation. In addition, it is reported that the particular video surveillance system had special software based on which only shadows appeared in the system image, into which it turned human figures. It is also stated that no face image was stored or transmitted. It is also stated that there was special signage informing the

workers about the cameras and that the workers were aware of their existence and had given their consent. The data controller, then, with no. prot. C/EXE/858/17-03-2021 document of the Authority was legally summoned to a hearing before the Authority at the meeting of 03-24-2021 to provide further clarifications and to present his views on the matter. 2 The meeting was attended by attorney Christina Paza, who verbally presented the views of the person in charge. Subsequently, the data controller received a deadline and timely filed the no. prot. G/EIS/2623/16-04-2021 memorandum. In the memorandum, after repeating the company's positions, a statement is added by the company that installed the system that it provided a trial version of shading software, in order to supervise the space, but not to see the characteristics of the subjects, while the purpose of the processing was added to protect against theft . Finally, a responsible statement of an employee, maid, of the hotel is attached that the employees had been verbally informed about the cameras in the kitchen and that there were relevant signs. The Authority, after examining all the elements of the file and referring to the proceedings of the meeting of 24-03-2021, after hearing the rapporteur and the clarifications of the assistant rapporteur, who then left before the conference and decision-making, and after thorough discussion, IT WAS CONSIDERED ACCORDING TO THE LAW 1. According to article 2 par. a' of Law 2472/1997 and recitals 14-17 in the preamble of Directive 95/46/EC, audio and video data, as long as they refer to persons, constitute personal data. 2. The storage and transmission of an image of a person, which is collected by a video surveillance system, which operates permanently, continuously or at regular intervals, in a closed or open area of gathering or passage of persons, constitutes processing of personal data and in fact fully or partially automated in the sense of articles 2 par. d' and 3 par. 1 of Law 2472/1997. 3. According to article 4 par. 1 of law 2472/1997, a basic condition for the legality of the processing of personal data is the observance of proportionality, in the sense that the collected data must be necessary and appropriate for the intended purpose, the which should not be able to be achieved by milder means. Furthermore, the processing of image data through video surveillance system 3, for the purposes stated by the controller, can only be based on the provision of no. 5 par. 2 e' of Law 2472/1997 "The processing is absolutely necessary for the satisfaction of the legal interest pursued by the data controller or the third party or third parties to whom the data is communicated and on the condition that this clearly overrides the rights and interests of the persons to whom the data refer and their fundamental freedoms are not affected". 4. According to article 5 of no. 1/2011 of the Authority's Directive on the use of video surveillance systems for the protection of persons and goods, the legality of the processing is examined in the context of the purpose pursued by the controller and in accordance with the principle of proportionality, which requires video surveillance systems to be convenient

and necessary in relation to the intended purpose, which should not be achieved by milder means (articles 4 and 5 of Law 2472/1997). The affordability and necessity of video surveillance is assessed based on the risk that the controller wants to face in relation to the intended purpose. 5. Furthermore, the installation points of the cameras and the way of receiving the data must be determined in such a way that the data collected is no more than is absolutely necessary to fulfill the purpose of the processing and fundamental rights are not affected of the persons present in the area being monitored and in particular not to violate what can be considered as a "legitimate expectation of a certain degree of privacy protection" in a specific area. 6. Also, according to article 7 of no. 1/2011 Directive, the system should not be used to monitor workers within the workplace, except in specific exceptional cases in which this is justified by the nature and working conditions and is necessary to protect the health and safety of the employees or the protection of critical banks, high-risk facilities). (e.g. military factories, work areas 4 7. Also, according to article 17 par. 1 of Directive no. 1/2011, the operation of video surveillance systems in hotel units in any form (hotels, boarding houses, rented rooms, etc. .) must be limited exclusively to areas that aim to control incoming/outgoing traffic, while, in accordance with article 19 par. 4 of the same Directive, the operation of cameras in catering and leisure areas, in fitting rooms, in toilets and in areas where they work is prohibited employees and are not accessible to the public. 8. According to article 12 of Directive No. 1/2011, before a person enters the range of the video surveillance system, the data controller must inform them, in a visible and comprehensible way, that it is to enter an area that is being videotaped. To this end, it must:

a) be posted in a sufficient number and in a visible place clearly visible signs, which will indicate the person on whose behalf the video is being recorded (the person in charge of processing), the purpose, as well as the person with whom the interested parties can contact to exercise the rights that Law 2472/1997 recognizes to the data subject. 9. As stated in article 10 of Directive No. 1/2011, the controller is obliged to notify the Authority of the installation of a video surveillance system before the start of processing, in accordance with article 6 of Law 2472/1997. 10. In the present case, taking into account the elements of the file,

the following results:

- The video surveillance system that operated on his premises

responsible had not been notified to the Authority, and therefore there was violation of Article 6 of Law 2472/1997.

- The video surveillance system in question does not meet the requirements

of legality set out in articles 7, 8, 12 and 19 of no. 1/2011

Directive of the Authority, since there were cameras in the workplace, without justified by the nature and working conditions. Yes, from

moment when the main purpose for which the cameras were installed

it was stated that it was fire protection it is judged that the particular one

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purpose could also be achieved by milder means, such as for example special detectors.

- Also, while it is reported that signs had been posted for the information of employees regarding the video surveillance system, it has not some relevant evidence is presented, in addition to the person responsible statement of the owners and an employee, while in his photos of space from the complaint do not seem to exist.

- The claim in the document sent by the controller from installation company regarding the special software that it had video surveillance system in order to record only shadows on kitchen area is not documented with a sample image.

- It is considered necessary to mention that even in the event that art because the video surveillance system recorded the shadows of the workers possible to identify the persons who were supervised, based on service schedule, while video surveillance may affects the behavior of persons in specific spaces and, by extension, to direct it, a fact that can creates psychological pressure, as a person who knows that is being watched trying to adjust his behavior to expectations of the one who watches it each time.

- Therefore, it follows that the fundamental imperatives for the

legality of any collection and processing of personal data,

which the provisions of articles 4, 5, 6 and 11 of Law 2472/1997 set.

Taking into account the above findings, and in view of the gravity of

violations found, the Authority unanimously decides that it should be imposed

to the person in charge of the processing or provided in article 21 par. 1 item. b' of n.

2472/1997 sanction referred to in the operative part of the present and which

is judged proportional to the number and gravity of the violations.

FOR THOSE REASONS

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The Authority taking into account the above:

Enforces, based on articles 19 par. 1 item. f and 21 of Law 2472/1997, at

general partnership "MARIA & DESPOINA KOUSATHANA O.E." fine five

thousand (5,000) euros for the above described violations of the law.

2472/1997. In detail, it imposes a fine:

3,000 euros for not disclosing the video surveillance system

1,000 euros for illegal operation of a video surveillance system in

hotel kitchen areas

1,000 euros for not informing the subjects about the

processed through the video surveillance system.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou

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