

Order injunction against Il Sole 24 Ore S.p.a. - April 28, 2022

Record of measures

n. 157 of 22 April 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by Professor Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, members and the cons. Fabio Mattei, general secretary;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter, the "Regulation");

GIVEN the Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 (Legislative Decree 30 June 2003, n.196, as amended by Legislative Decree 10 August 2018, no. 101, hereinafter the "Code");

GIVEN the note of 26 March 2020 with which the lawyer Schuster, in the interest of XX, XX and the minor XX, denounced the violation of art. 52 of the Code, as well as the provisions for the protection of information relating to the status of adoptive child (Article 73, Law No. 183/1984) in relation to the full publication by Il Sole 24 Ore S.p.a. ("Newspaper Local Authorities & Pa" - corresponding to the article entitled "XX"), of the order of the Court of Cassation no. XX concerning the recognition in Italy of the provision of a US judge concerning the adoption of the minor by the homosexual couple; this, despite the annotation referred to in the aforementioned art. 52 of the Code, ex officio, aimed at prescribing the omission of the personal details of the interested parties in the event of dissemination or reproduction of the deed;

CONSIDERING that the applicants, with the same note of 26 March, have also made a complaint pursuant to art. 77 of the Regulation, complaining of non-compliance with the request for access to data made to Il Sole 24 Ore S.p.a., pursuant to Articles 15 -22 of the Regulations, having received feedback only regarding the removal of the aforementioned ordinance but not the other requests made;

GIVEN the request for information sent by the Office on February 19, 2021 (prot. 10392/21) and the reply note of the following March 9 in which Il Sole 24 Ore S.p.a., represented that:

- the content that is the subject of the complaint was not posted on the main website of the newspaper, but in the magazine

“Quotidiano Enti locale & Pa”, an editorial product distributed exclusively in digital format and whose contents are reserved for subscribers;

- the publication of the ordinance was the result of a mere involuntary error on the part of the graphic assistants of the production who are responsible for attaching the documents relating to the articles commenting on legal issues of interest, specifying that the article commenting on the judicial provision subject the complaint was in any case lacking in the personal data concerning the parties;

- the Company removed the order on 14 December 2019, the day following the receipt of the warning, at the same time communicating the elimination of the copy in pdf format from its system, so as not to make it available through search engines; with this fulfillment he believed he had complied with the complainant's request formulated with two separate emails of 13 December;

- in the light of the above, he considered it unnecessary to reply to the further letter of 17 January 2020, as it was clear that "no further data remained in his availability, that no further processing could have been done and that the only one carried out had the obvious purpose, inferable from the article, in support of which the provision was posted ";

- on 20 April 2020, after submitting the complaint to the Guarantor, he received a further letter from the lawyer of the petitioners, concerning "Notice of compensation for violation of rights in relation to the processing of personal data" to which - although considering it superfluous in reason for what has already been fulfilled - he proceeded to provide feedback on the following 9 May, thus deeming that he had exhausted the requests of the interested parties in terms of exercising the rights referred to in Articles articles 15 - 22 of the Regulations and instead awaiting the announced counterparty actions in terms of compensation claims;

GIVEN the note of 25 March 2021 with which the lawyer of the complainants replied, highlighting that:

- Contrary to the Publisher's assertion, the article in question was freely accessible by any visitor to the website, as there was a wording that allowed it to be read for free even by non-subscribers, so as to allow the news to be widely disseminated;

- the owner, recognizing the erroneous publication of the data, has also admitted the violation of art. 52 of the Code for which an administrative sanction is envisaged (Article 166, paragraph 2 of the Code and Article 83, paragraph 3 of the Regulation); this profile was reported to the Guarantor together with the complaint for violation of the provisions on the exercise of rights;

- from the declarations of il Sole 24 Ore S.p.a. it is confirmed that the latter did not provide complete feedback to the request

for access to data formulated several times by the complainants as "it never communicated the names of the subjects to whom it transmitted the order in question, being known the practice of sending legal information also by means of newsletters or by passing it on to other publishers or press agencies "and, having argued that there have been only 30 accesses to the document in question, has in any case not communicated its identity;

GIVEN the note of 19 April 2021 with which Il Sole 24 Ore S.p.a., in acknowledging that there has been an error and that it has led to the dissemination of personal data even of a minor:

- contested the assumption that, since it is a freely available pdf, the news would have been widely disseminated since "if it is true that the pdf was available for free consultation until 13 December 2019, therefore for 30 days, it is equally true that , in this period, it had only 30 views, by a total of 19 unique browsers ";
- rejected the charges regarding the non-response to the request for access given the peculiarity of the journalistic and legal information sector that makes the purpose of the processing clear (excluding possible alternatives, once the data has been deleted, as happened in the present case) ;
- claimed not to have omitted information regarding the subjects to whom the data would have been communicated, for example by sending newsletters to subscribers, given the fact that the latter did not, however, allow direct access to the order in question;

GIVEN the note of the Office of 7 October 2021 (prot. No. 50221/21) with which, pursuant to art. 166, paragraph 5, of the Code, was communicated to Il Sole 24 Ore S.p.a. the initiation of the procedure for the possible adoption of the measures referred to in art. 58, par. 2, of the Regulations and notified of possible violations of the law in relation to the following provisions:

- the general principles of processing pursuant to art. 5 par. 1 of the Regulation and, in particular, the principle of "lawfulness and correctness" (letter a);
- art. 50 of the Code concerning the prohibition of publication of information suitable for allowing the identification of a minor in legal proceedings;
- art. 52, paragraph 5, of the Code which governs the limits on the dissemination of identification data in judicial measures in proceedings relating to family and status relationships of individuals;
- art. 9 of the Regulation concerning the limits to the processing of particular data, including those relating to the sexual life or

sexual orientation of the person;

- art. 85 of the Regulation and art. 136 ff. of the Code governing the processing of data for journalistic purposes and other manifestations of thought, with particular reference to art. 137, paragraph 3, of the Code;

- the Deontological Rules referred to in Annex A1 of the Code - and in particular art. 7 (Protection of minors) - and the Treviso Charter;

- art. 2 - quater of the Code which states that compliance with the Deontological Rules constitutes "an essential condition for the lawfulness and correctness of the processing";

- art. 12, paragraphs 3 and 4 of the Regulation with reference to the exercise of the rights referred to in Articles 15 - 22 of the Regulation itself;

GIVEN the note of 8 November 2021 with which Il Sole 24 Ore S.p.a., in recalling the previous defenses, intended to specify that:

- it is an isolated case due to an involuntary error in the face of a very significant number of ritually anonymised judicial measures;

- the Company has implemented a procurement process of the sentences and provisions of the Supreme Court aimed at ensuring full compliance with the provisions on data protection and has also dedicated particular attention to training journalists in this area and with particular attention to the issue of minors;

- "only 19 people, therefore, some more than once, have read the provision, accessing the Company's website, not being able to answer for the further and undocumented use, ventilated by the counterparty, which could have been made of the same ";

- the violation is minor and non-malicious and in any case the Company took immediate action to remove the provision;

- "the delayed and partial response to the request for access to data, formulated by the interested parties is largely due to the superfluity of the information requested, inferable from facts known to them and having the company promptly eliminated the judicial measure as requested by the interested parties by e-mail dated 13 December 2019, as well as [due] to the protection of the privacy of its users, as governed by its Policy "; in any case, "after having received on 20 April 2020 a further letter concerning" Notice of compensation for violation of rights in relation to the processing of personal data ", the company promptly provided complete feedback to the interested parties on 9 May 2020 ";

CONSIDERING that, unless the fact constitutes a more serious crime, whoever, in a proceeding before the Guarantor, falsely

declares or certifies news or circumstances or produces false acts or documents, is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the execution of the tasks or the exercise of the powers of the Guarantor";

NOTING that it is not disputed that, in the "Quotidiano Enti locale & Pa", published by Il Sole 24 Ore S.p.a., on November 13, 2019 there was the full publication - including the identification data - of a jurisdictional provision regarding family relationships concerning the adoption of a minor by a couple of the same sex and on which the annotation referred to in art. 52, paragraph 2 of the Code aimed at prescribing the omission of the personal details of the interested parties in the event of dissemination or reproduction of the document;

Whereas:

- art. 50 of the Code prohibits the publication of information suitable for allowing the identification of a minor even in judicial proceedings in matters other than criminal;
- art. 52, paragraph 4 of the Code states that "in the event of dissemination, also by third parties, of judgments or other measures bearing the annotation referred to in paragraph 2, or the relative legal maxims, the indication of the general information and other identification data of the interested party "and the subsequent paragraph 5 states that" anyone who disseminates sentences or other judicial measures of the judicial authority of any order and degree is required to omit in any case, even in the absence of the annotation referred to in paragraph 2, the personal details, other identification data or other data also relating to third parties from which the identity of minors or of the parties in proceedings relating to family relationships and the status of persons can be inferred, even indirectly ";
- art. 9 of the Regulation prohibits the processing of data relating to a person's sexual life or sexual orientation;
- art. 137, paragraph 3, of the Code requires that the dissemination of data for journalistic purposes takes place in compliance with the parameter of "essentiality of information regarding facts of public interest";
- the Deontological Rules referred to in Annex A1 of the Code and, in particular, art. 7 recognize the primacy of the minor's right to privacy over the right of the press and require the adoption of precautions aimed at ensuring their anonymity;
- the Treviso Charter, in the text in force at the time of publication, prescribed that "with regard to cases of custody or adoption and those of separated or divorced parents, without prejudice to the right to report and criticize decisions judicial authority and the usefulness of articles or inquiries, it is however necessary to protect the anonymity of the minor in these cases as well so

as not to affect the harmonious development of his personality, avoiding sensationalism and any form of speculation "; the same principle of protecting the anonymity of the minor is provided for in the text of the Charter revised and updated by the Council of the Order of Journalists in the session of 6 July 2021 (Articles 2 and 7);

- art. 2-quater of the Code provides that compliance with the Deontological Rules constitutes an "essential condition for the lawfulness and correctness of the processing".

CONSIDERING that the processing described constitutes a violation of the aforementioned provisions and of the general principle according to which personal data must be processed lawfully and correctly (Article 5, paragraph 1, letter a) of the Regulation;

CONSIDERING therefore, pursuant to art. 57 par. 1, lett. f), of the Regulation of having to declare the unlawfulness of the processing and for the effect, pursuant to art. 58, par. 2, lett. f), of the Regulation to have to order the prohibition of further processing of the personal data of the complainants, except for their conservation, also for the purposes of any use in court;

NOTING that with regard to the exercise of the rights referred to in Articles 15 -21 of the Regulation, the owner has provided a timely response to the first request of the complainants (first email of 13 December 2019), removing the provision object of the complaint the day after the request formulated by the complainants, however omitting to respond to further requests made on the same date by the interested parties regarding the processing of their data, including, in particular the scope of communication of the data themselves, information which is indeed particularly relevant given the nature of the data itself and easily verifiable, at least, in the first instance, in the terms and with the arguments that it then provided subsequently, after a further reminder (20 April 2020), to the complainants (note of 9 May 2020) and to this Authority during the investigation;

CONSIDERING that this conduct highlights elements that are abstractly suitable for integrating the extremes of a violation of art. 12 of the Regulations;

CONSIDERING therefore that it is necessary to contact Il Sole 24 Ore S.p.a. a warning, pursuant to art. 58, par. 2, lett. a), of the Regulation, in relation to the fact that the incomplete and late response to a request attributable to the exercise of one of the rights provided for by articles 15-21 of the Regulation constitutes a conduct contra legem, also liable to sanction (Article 83, paragraph 5. letter b), inviting the Company to identify, in relation to future similar cases, adequate measures to guarantee the effective exercise of the rights of the interested parties within the terms and in the manner provided for by the aforementioned art. 12 of the Regulations;

NOTING also that the complainants have initiated an action before the civil court for damages;

CONSIDERING also that failure to comply with articles 5 and 9 of the Regulation is sanctioned by art. 83, par. 5, lett. a) of the Regulations and that, likewise, failure to comply with the provisions of art. 52, paragraphs 4 and 5 of the Code and the Deontological Rules is sanctioned pursuant to the combined provisions of Articles 2-quater, 166, paragraph 2, of the Code, and 83, par. 5, of the Regulations;

CONSIDERING, therefore, that it is necessary to adopt an injunction order, pursuant to Articles 166, paragraph 7, of the Code and 18 of law no. 689/1981, for application to Il Sole 24 Ore S.p.a. of the pecuniary administrative sanction provided in conjunction with art. 2-quater, 166, paragraph 2, of the Code, and 83, par. 3 and 5, of the Regulations;

GIVEN art. 83, par. 3, of the Regulation, according to which if in relation to the same treatment or to related treatments, a data controller or data processor violates various provisions of the Regulation with willful misconduct or negligence, the amount of the pecuniary administrative sanction does not exceed the amount applicable for the most serious violation;

NOTING that for the determination of the amount of the pecuniary sanction, it is necessary to take into account the elements indicated in art. 83, par. 2, of the Regulation and that in the present case it is necessary to take into consideration, as aggravating circumstances:

a) the seriousness of the violation (Article 83, paragraph 2, letter a), of the Regulation), taking into account the particular nature of the data processed suitable for revealing the identity of a minor and his or her status as an adopted child - information protected as such by the legal system (law 4 May 1983, n. 184) - as well as the sexual orientation of parents; this in relation to a particularly delicate issue which, at present, has not yet received complete discipline in Italy;

b) again with reference to the seriousness of the violation, the circumstance that the dissemination of these data was carried out, without the knowledge of the interested parties, for journalistic purposes and, in particular, for information on a profile / case study of the law (the recognition of a foreign adoption sentence, by adoptive parents of the same sex) which totally disregarded the identity of the interested parties;

c) again, in terms of severity, the level of damage suffered by the interested parties, in consideration of the impact of such publication in the social context of reference of the "being formed" family unit in the Italian legal system, given the aforementioned absence of legislative recognition of the adoption by same-sex parents;

d) the negligent nature of the violation (Article 83, paragraph 2, letter b), of the Regulation), taking into account the

circumstance declared by the same owner of having implemented a tested system of procurement of judgments and judicial measures - whose The comment represents, in part significant, the purpose of the magazine - and that, also due to the economic and organizational conditions of the Company in the publishing field, it should have ensured careful verification of the material being published, especially where - as in the case of especially, also by express admission of the Company - the annotation pursuant to art. 52, paragraph 2 of the Code;

e) the relevant organizational, economic and professional conditions of the offender (Article 83, paragraph 2, letter k), of the Regulations) taking into account the findings in the financial statements for the year 2020;

and, as mitigating factors:

f) the purposes pursued by the owner, attributable - in general terms - to the freedom of information (Article 85) and the Code (Articles 136 et seq.);

g) the adoption of suitable measures to eliminate the consequences of the violation (Article 83, paragraph 2, letter c), of the Regulation), having the owner removed the provision promptly;

h) the collaboration shown in the context of the procedure (Article 83, paragraph 2, letter f), of the Regulations) and the absence of previous complaints by the Authority in the journalistic field (Article 83, paragraph 2, letter e), of the Regulation);

CONSIDERING the above parameters and the principles of effectiveness, proportionality and dissuasiveness indicated in art. 83, par. 1, of the Regulations;

CONSIDERING that, on the basis of all the elements indicated above, the pecuniary administrative sanction must be applied in the amount of € 40,000.00 (forty thousand);

CONSIDERING also - also in consideration of the invasiveness of the disputed treatment with respect to the fundamental rights of the data subjects, the type of data processed and the sector of activity of the owner - that, pursuant to Articles 166, paragraph 7, of the Code, and 16, paragraph 1, of the Guarantor Regulation no. 1/2019, this provision should be published on the Guarantor's website, as an ancillary sanction;

CONSIDERING that the conditions exist to proceed with the annotation in the internal register of the Authority referred to in art. 57, par. 1, lett. u), of the Regulation, in relation to the measures adopted in this case in compliance with art. 58, par. 2, of the same Regulation;

HAVING REGARD to the documentation on file;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000;

SPEAKER Attorney Guido Scorza;

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1 letter f), of the Regulation. declares the unlawfulness of the processing in the terms referred to in the introduction and for the effect:

a) pursuant to art. 58, par. 2, lett. f) of the Regulations, provides for the prohibition of further processing of the personal data of the complainants, except for their conservation, also for the purposes of any use in court;

b) pursuant to art. 58, par. 2, lett. a), of the Regulations, provides for the extent of the warning against Il Sole 24 Ore S.p.a. in relation to the circumstance that the incomplete and late response to a request attributable to the exercise of one of the rights provided for by articles 15 - 21 of the Regulation constitutes a conduct contra legem, also liable to an administrative sanction (Article 83, paragraph 5. lett b), inviting the Company to identify, in relation to future similar cases, adequate measures to guarantee the effective exercise of the rights of the interested parties within the terms and in the manner provided for by the aforementioned art. 12 of the Regulation.

ORDER

pursuant to art. 58, paragraph 2 letter. i) and 83 of the Regulations to Il Sole 24 Ore S.p.a., with registered office in Milan, viale Sarca 223, C.F. n. 00777910159, in the person of the pro-tempore legal representative, to pay the sum of € 40,000.00 (forty thousand) as a fine for the violations indicated in the motivation, representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within thirty days, an amount equal to half of the sanction imposed;

INJUNCES

to Il Sole 24 Ore S.p.a., in the event of failure to settle the dispute pursuant to the aforementioned art. 166, paragraph 8, of the Code, to pay the sum of € 40,000.00 (forty thousand), according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. . 27 of the law n. 689/1981.

HAS

pursuant to art. 166, paragraph 7, of the Code, the full publication of this provision on the website of the Guarantor and the

annotation in the internal register of the Authority referred to in art. 57, par. 1, lett. u), of the Regulations, of the measures adopted against Il Sole 24 Ore S.p.a. in accordance with art. 58, par. 2, of the same Regulation.

Pursuant to art. 78 of the Regulation, as well as art. 152 of the Code and 10 of the d. lg. 1 September 2011, n. 150, against this provision, opposition may be proposed to the ordinary judicial authority, with an appeal filed, alternatively, at the court of the place where the data controller resides or is based or at that of the place of residence of the interested party within the deadline of thirty days from the date of communication of the provision itself or sixty days if the applicant resides abroad.

Rome, April 28, 2022

THE VICE-PRESIDENT

Cerrina Feroni

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei