[doc. web no. 9852255]

Injunction against the "Bianco-Pascoli" Secondary State School of Fasano (BR) - December 15, 2022

Register of measures

no. 421 of 15 December 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, prof.ssa Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, components, and dr. Fabio Mattei, general secretary;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, concerning the protection of natural persons with regard to the processing of personal data, as well as the free movement of such data and which repeals Directive 95/46/ CE, “General Data Protection Regulation” (hereinafter, “Regulation”);

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national legal system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of individuals with regard to the processing of personal data, as well as to the free movement of such data and which repeals Directive 95/46/EC (hereinafter the "Code");

CONSIDERING the Regulation n. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved with resolution no. 98 of 4/4/2019, published in the Official Gazette no. 106 of 8/5/2019 and in www.gpdp.it, doc. web no. 9107633 (hereinafter "Regulation of the Guarantor n. 1/2019");

Given the documentation in the deeds;

Given the observations made by the general secretary pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the Guarantor's office for the protection of personal data, doc. web no. 1098801;

Speaker Dr. Agostino Ghiglia;

WHEREAS

1. The complaint.

With a complaint received by the Authority, the publication, on the electronic register of the 1st grade "Bianco-Pascoli" State Secondary School of Fasano (hereinafter the "Institute"), was complained of, of a circular containing the list, divided by class,

of pupils "requesting attendance of lessons in presence or through DDI" bearing, in correspondence with the names of certain pupils, the reference "to the categories BES, DSA or STUDENT H". It was also represented that the school did not respond to the request to exercise the rights pursuant to articles from 15 to 22 of the Regulation, presented by the claimants on the XX date.

2. The preliminary investigation.

With a note dated XX (Prot. XX), responding to the request for information formulated by this Authority, the Head of the school regent of the Institute, represented, in particular, that:

- it was "proceeded to request clarifications "from the head teacher of the time (...) and to directly consult the documentation in the school records";

- "in the regularly registered correspondence of the school" a letter was "found (...) received via Pec il XX with which the lawyer (...) wrote to the Headmaster (...) on behalf of the mother of a single pupil included in one of the "incriminated" lists, to communicate a "report of violation of the regulations on the protection of personal data";

- the previous school principal replied to the aforementioned letter clarifying that "the publication of the list with the annotation (...) was published on the electronic register and visible only to pupils and teachers of the class at approximately 2.30 pm on the XX and that the list was removed at approximately 08.00 the next day";

- "in the same note the (previous headteacher) specified that "The publication of the list with the annotation was carried out by the office for a mere clerical error due to the particular work commitment";

The Headmaster currently in service, therefore represented, in the light of the checks carried out, "of the information gathered by the school collaborators and the secretariat, of the clarifications provided by the (previous Headteacher)" that:

- "The publication of the lists with the indication of the sensitive data of some pupils - whose names were marked with the acronyms DSA, H and BES - would have been carried out due to a mere material error which would have been remedied in a very short time, as confirmed by the manager of the time";

- "the section of the electronic register in which such publication would have taken place is the one called "communications"";

- "the teachers of the Class Council and the families of the pupils listed in the list of the same class have access, exclusively through a personal password, to communications for that class. In the present case, only the families of the pupils listed therein and the teachers of the class had access to each list";

- "the lists with information on sensitive data" would remain visible "for about 18 hours (from 2.30 pm on the XX until 8.00 am on the X)".

- was not able "as regards the failure to respond to the requests made by the families through the lawyer (...) to report the reasons why the Manager of the time, contrary to what happened (in two other cases), had decided not to respond", assuming "that the manager, having ascertained that the matter highlighted by the lawyer (...) was the same as that referred to in the previous reports to which he had already replied and having provided for the removal of the lists from publication with effective and prompt behavior, he considered the question already outdated and a reply superfluous".

Based on the elements acquired, the Office notified the Institute, in its capacity as data controller, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the provisions pursuant to art. 58, par. 2, of the Regulation, since the lists divided by class, containing personal data, also relating to the health of the complainant's children and other pupils, even if published in a reserved area of the electronic register not accessible to anyone, would have given rise, in this case, to a communication of personal data to third parties in violation of articles 5, 6 and 9 of the Regulation and 2-ter and 2-sexies of the Code. Furthermore, despite having taken steps to cancel the information relating to the state of health of minors from the electronic register, the Institute has not provided a reply to the request to exercise the rights, formulated by the interested parties, in violation of art. 12 of the Regulation.

Therefore, the Office invited the aforesaid owner to produce written defenses or documents or to ask to be heard by the Authority (Article 166, paragraphs 6 and 7, of the Code; as well as Article 18, paragraph 1, of Law No. 689 dated 11/24/1981).

The Institute sent its defense briefs, with a note of the XX, (prot. n. XX), representing, in particular, that:

- "the data in question (...) were communicated by mere error to a specific audience made up exclusively of parents of the same class who had access with a personal password (it should be noted that the password is not released to students who, therefore, do not have access to the Register), who knew well among other things all the needs of the class, even of a special nature";

- "this publication was limited to a few hours (about 18) including those at night";

- "the event in question must be contextualized in the historical moment in which it occurred or during the Covid 19 pandemic when the school secretariats were subjected to a considerable effort to comply with the countless requirements relating to the organization of distance teaching, mixed teaching, teaching in presence, etc. in an emergency situation, therefore, never

experienced before by the Italian school system;

- "the publication of a file for internal use of the offices, therefore drawn up for a better response from the school aimed at targeted and specific educational interventions, occurred due to a mere oversight due to this situation";

- "the measures taken were timely since the removal took place after a few hours or as soon as the secretariat became aware of the error";

- "the "Bianco-Pascoli" school adopts procedures that respect the protection and treatment of personal data";

- "incorrectly published data are considered to belong to the category of personal data relating to the state of health (...) even if distinguished by acronyms whose meaning, among other things, is known only by school staff and not by all families";

- "regarding the objection pursuant to article 12 of the Regulation, it should be noted (that) the request sent via certified email on the XX date by the lawyer (…) was clearly confused (…), generic, not very detailed and did not meet the requirements of the Regulation and the Code. This probably created confusion in the addressee, in addition to which no powers of attorney and/or mandates and/or proxies of the alleged victims of the publication were attached in favor of the lawyer. (...) and, therefore, the same had to be considered of origin of the "subscribers" who, however, did not attach any identity document or other authentication of the signatures that did not certify the actual origin, nor did it contain details on the request of each signatory. Furthermore, the application did not report any of the notices indicated by this Guarantor in the forms on the site. For all these reasons, the School probably did not proceed to verify the aforesaid request since the same was prima facie illegitimate, lacking the details and indication of the nature of the data requested by each and coming from subjects who neither certified their identity nor proceeded to digitally sign it ".

3. Applicable legislation.

3.1 The regulatory framework.

Pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter, the "Regulation"), the processing of personal data carried out in the public sphere is lawful when it is necessary "to fulfill a legal obligation to which the data controller is subject" or "for the execution of a task in the public interest or connected to the exercise of public powers vested in the data controller" (art. 6, paragraph 1, letter c) and e) and paragraphs 2 and 3 of the Regulation; art 2-ter of Legislative Decree no. 196 of 30 June 2003 - Code regarding the protection of personal data, in the text prior to the changes introduced with the d.l. 8 October 2021, no. 139, hereinafter, the "Code").

European legislation provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of this regulation with regard to treatment, in accordance with paragraph 1, letters c) and e), determining more precisely specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing (…)" (Article 6, paragraph 2, of the Regulation). In this regard, it should be noted that the operation of "communication" of personal data, by public entities, is permitted only when provided for by a law or regulation (Article 2-ter, paragraphs 1, 3 and 4, letter a), of the Code in the text prior to the amendments referred to in Legislative Decree 8 October 2021, no. 139).

The data controller is, in any case, required to comply with the general principles regarding the protection of personal data (Article 5 of the Regulation).

Pursuant to art. 12, par. 3 of the Regulation, moreover, the data controller is required to provide the interested party with "information relating to the action taken regarding a request pursuant to articles 15 to 22 without unjustified delay and, in any case, at the latest within a month from receipt of the request" and in any case, if he does not comply with the request, he must inform "the interested party without delay, and at the latest within one month from receipt of the request, of the reasons for the non-compliance and of the possibility of proposing a complaint to a supervisory authority and to lodge a judicial appeal" (Article 12, paragraphs 1 and 4, of the Regulation).

The controller is required to adopt "appropriate measures to provide the interested party with all (...) communications referred to in articles 15 to 22 (...)" (Article 12, paragraph 1, of the Regulation).

3.2 The processing of personal data carried out by the Institute.

As can be seen from the deeds and declarations made by the data controller as well as from the assessment carried out on the basis of the elements acquired following the preliminary investigation and the subsequent evaluations of this Department, the Institute has made available, in the section of the electronic register reserved for "communications", the lists, divided by class, of pupils, "requesting attendance of lessons in presence or through DDI" bearing, in correspondence with the names of certain pupils, the reference "to the categories BES, DSA or STUDENT H".

These lists, made accessible only to teachers and the families of pupils in the reference classes, were visible on the electronic register for about eighteen hours and subsequently removed by the Institute.

Preliminarily, in recalling that, pursuant to art. 4 par.1, no. 15 of the Regulation are considered data relating to health "personal data relating to the physical and mental health of a natural person, including the provision of health care services, which reveal

information on his state of health", it is specified that even the only reference to the term "STUDENT H", notoriously used in schools to indicate pupils with disabilities, allows information to be obtained on the state of health of a person to whom this term is attributed.

Similar considerations can be made with regard to the acronym "DSA" which identifies "specific learning disorders" such as dyslexia, dysgraphia, dysorthography and dyscalculia whose diagnosis, "carried out in the context of specialist treatments already insured by the Health Service national law", gives students the right to take advantage of specific dispensing and compensatory provisions for didactic flexibility during the cycles of education and training and in university studies. (see Law No. 170 of 8 October 2010; Decree of the Ministry of Education, University and Research of 12 July 2011; Ministerial Directive of 27 December 2012; Ministerial Circular No. 8 of 6 March 2013).

It should also be noted that with the acronym "BES" (Special Educational Needs) the current sector discipline indicates an area of "scholastic disadvantage", which includes problems of a different order, basically attributable to "three major -categories: that of disability; that of specific developmental disorders and that of socio-economic, linguistic, cultural disadvantage" (cf. Directive of 27 December 2012 and ministerial circular of 6 March 2013 cit.). Therefore, even the indication of this acronym next to the names of the interested parties provides personal information as well as information relating to the health of the same, even through the consultation of the aforementioned legislation.

Although, therefore, the making available of the documentation in question, in the full version and containing personal data also relating to the health of the children of the complainants and other interested parties, by mistake took place in a restricted access area of the electronic register of the Institute - not accessible to anyone and therefore not such as to determine the dissemination of personal data - the knowledge of the data contained therein occurred in any case in favor of a specific or determinable group of subjects, i.e. all the parents of the pupils of the single class of reference and not, however, exclusively for the benefit of the individual interested parties.

For these reasons, the Institute has unjustifiably disclosed to third parties the personal data, also relating to health, of the children of the claimants and of other students. Nor can it be considered relevant, for the purposes of assessing the overall conduct of the data controller, what was declared regarding the fact that the parents knew "all the needs of the class, even of a special nature".

In the light of the foregoing considerations, the availability of the version of the aforementioned lists intended for internal use in

the reserved area of the electronic register containing, in correspondence with the names of certain students, the reference to the acronyms BES, DSA or ALUNNO H, in fact made available to all parents of the reference classes, information, also relating to health, of the children of the complainants and other interested parties and also made the families of the interested parties, mutually aware of this information (cf. the definition of "communication" of personal data contained in article 2-ter paragraph 4 letter a), of the Code).

For these reasons, it turned out that the Institute has implemented a treatment of personal data in violation of articles 5, 6, 9 of the Regulation and 2-ter and 2 sexies of the Code in the text prior to the amendments made by Legislative Decree 8 October 2021, no. 139, converted, with modifications, by l. 3 December 2021, no. 205.

3.3 The exercise of the rights of the interested parties

The investigations carried out also show that the Institute, despite having taken steps to cancel the information also relating to the state of health of the interested parties from the electronic register, has not provided a reply to the request to exercise the rights pursuant to articles from 15 to 22 of the Regulation formulated, on the XX date, by the complainants.

In this regard, it should be noted that, pursuant to art. 12, par. 3 of the Regulation, the data controller is required to provide the data subject with "information relating to the action taken regarding a request pursuant to articles 15 to 22 without unjustified delay and, in any case, at the latest within one month from receipt of the request" and that, in any case, if it does not comply with the request of the interested party, the holder must inform the latter, "without delay, and at the latest within one month of receipt of the request, of the reasons for the non-compliance and of the possibility to lodge a complaint with a supervisory authority and to lodge a judicial appeal" (Article 12, paragraph 4, of the Regulation).

Therefore, in the light of the aforementioned provisions, the hypotheses of the current school manager regarding the fact that the previous school manager "having ascertained that the story highlighted by the lawyer (...) was the same as that referred to in the previous reports to which he had already replied, and having provided for the removal of the lists from publication with effective and prompt behavior, he considered the question already outdated and a reply superfluous".

It is also noted that, for the purposes of assessing the overall conduct of the data controller, the information represented by the Institute regarding the fact that "the request sent via Pec dated XX by the lawyer (...) was clearly confused (...), generic, not very detailed and poorly responding to the requirements of the Regulation and the Code so as to create "probably confusion in the addressee" and that the same had not been "attached powers of attorney and/or mandates and/or proxies of the alleged

damaged by the publication in favor of the lawyer (...)" or "identity document or other signature authentication that does not certify the actual origin".

In this regard, it is noted, in fact, that the aforementioned request, sent via certified email by the lawyer (…) on behalf of the complainants, while not carrying a copy of the identity document of the signatories as an attachment, it contains the list of names, the signature and the number of the identity document of the signatories and which, pursuant to the Regulation, in the hypotheses in which the data controller has reasonable doubts about the identity of the person submitting the request, the same may request further information necessary to ascertain the identity of the interested party (see Article 12, paragraph 6 of the Regulation). This information does not appear to have been requested from the interested parties by the school. Nor does it appear from the documentation in the documents that the data controller has informed the interested parties of the reasons for the non-compliance with the request to exercise the rights, as required by the aforementioned legislation (Article 12, paragraph 4, of the Regulation).

For these reasons, the Institute, albeit for the reasons indicated above, did not provide a reply to the interested parties within the terms indicated by the Regulation, giving rise to a violation of art. 12 of the Regulation.

4. Conclusions.

In the light of the assessments referred to above, taking into account the statements made by the data controller during the preliminary investigation □ the truthfulness of which may be called upon to answer pursuant to art. 168 of the Code □ it should b noted that the elements provided by the data controller in the defense briefs do not allow for overcoming the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the filing of the present proceeding, not resorting Moreover, any of the cases provided for by art. 11 of the Regulation of the Guarantor n. 1/2019.

Therefore, the preliminary assessments of the Office are confirmed and the illegality of the processing of personal data carried out by the Institute is noted, in violation of articles 5, 6, 9 and 12 of the Regulation and 2-ter and 2-sexies of the Code (in the text prior to the amendments made by Legislative Decree 8 October 2021, n. 139, converted, with amendments, by Law 3 December 2021, n. 205).

The violation of the aforementioned provisions makes the administrative sanction envisaged by art. 83, par. 5, of the Regulation, pursuant to articles 58, par. 2, lit. i), and 83, par. 3, of the same Regulation and of the art. 166, paragraph 2, of the Code.

In this context, considering, in any case, that the conduct has exhausted its effects, the conditions for the adoption of corrective measures, pursuant to art. 58, par. 2, of the Regulation.

5. Adoption of the injunction order for the application of the pecuniary administrative sanction and accessory sanctions (articles 58, paragraph 2, letter i and 83 of the Regulation; article 166, paragraph 7, of the Code).

The Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation as well as art. 166 of the Code, has the power to "impose a pecuniary administrative sanction pursuant to article 83, in addition to the (other) (corrective) measures referred to in this paragraph, or instead of such measures, depending on the circumstances of each individual case" and, in this framework, "the Board (of the Guarantor) adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in full or in part, on the website of the Guarantor pursuant to article 166, paragraph 7, of the Code" (art. 16, paragraph 1, of the Guarantor's Regulation no. 1/2019).

In this regard, taking into account the art. 83, par. 3, of the Regulation, in the present case - also considering the reference contained in art. 166, paragraph 2, of the Code – the violation of the aforementioned provisions is subject to the application of the same pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation.

The aforementioned pecuniary administrative sanction imposed, depending on the circumstances of each individual case, must be determined in the amount taking into due account the elements provided for by art. 83, par. 2, of the Regulation.

In relation to the aforementioned elements, the particular delicacy of the personal data also relating to the health of thirty-four minors, unlawfully processed, was considered.

On the other hand, it was considered that the unlawful conduct was determined by a mere clerical error which occurred in the emergency period which caused a considerable increase in workload to the schools, that the document was made accessible, to a limited number of subjects, on the register for a limited period of time (about 18 hours), that the Institute proceeded, as soon as it became aware of the error and in any case before the intervention of the Authority, to eliminate the document from the electronic register, also demonstrating a broad collaboration with the Authority during the investigation of this proceeding.

Furthermore, favorably taken into consideration was the fact that there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Based on the aforementioned elements, evaluated as a whole, it is deemed necessary to determine the amount of the pecuniary sanction, in the amount of 3,000.00 (three thousand) euros for the violation of articles 5, 6, 9 and 12 of the

Regulation and 2-ter and 2-sexies of the Code, as a pecuniary administrative sanction withheld, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account the nature of the data being processed, it is also believed that the ancillary sanction of publication on the website of the Guarantor of this provision should be applied, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Regulation of the Guarantor n. 1/2019.

Finally, it should be noted that the conditions pursuant to art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

ALL THIS CONSIDERING THE GUARANTOR

pursuant to art. 57, par. 1, lit. f), declares the processing of personal data carried out by the "Bianco-Pascoli" Secondary State School of Fasano (BR) in the terms described in the reasoning, consisting in the violation of articles 5, 6, 9 and 12 of the Regulation and 2-ter and 2-sexies of the Code (in the text prior to the amendments made by Legislative Decree 8 October 2021, n. 139, converted, with amendments, by Law 3 December 2021, n. 205);

ORDER

pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, as well as art. 166 of the Code, to the "Bianco-Pascoli" Secondary State School, in the person of its pro-tempore legal representative, with registered office in via Giovanni XXIII, 64 72015 Fasano- Tax Code 90042860743 to pay the sum of 3,000.00 (three thousand) euros as an administrative fine for the violations indicated in this provision. It is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within 30 days, an amount equal to half of the fine imposed;

ENJOYS

At the "Bianco-Pascoli" Secondary State School of Fasano - without prejudice to the provisions of art. 166, paragraph 8 of the Code - of the Code, to pay the sum of 3,000.00 (three thousand) euros according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to the art. 27 of the law n. 689/1981;

HAS

the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code (see art. 16 of the Guarantor's Regulation no. 1/2019);

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lit. u), of the Regulation, of the violations and of the measures adopted in accordance with art. 58, par. 2, of the Regulation (see art. 17 of Regulation no. 1/2019).

Pursuant to articles 78 of the Regulation, 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision it is possible to lodge an appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the appellant resides abroad.

Rome, 15 December 2022

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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