

[doc. web n. 9745807]

Order injunction against A.S.L. Naples 1 Center - 13 January 2022

Record of measures

n. 7 of 13 January 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, 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, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / CE, "General Data Protection Regulation" (hereinafter, "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national 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 circulation of such data and which repeals Directive 95/46 / EC (hereinafter the "Code");

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

Having seen the documentation in the deeds;

Given the observations made by the secretary general pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and functioning of the office of the Guarantor for the protection of personal data, Doc. web n. 1098801;

Speaker Dr. Agostino Ghiglia;

WHEREAS

1. Introduction.

With a complaint of the XX, submitted pursuant to art. 77 of the Regulations, the complainant, a health officer serving at the A.S.L. Napoli 1 Centro (hereinafter, the "Company"), complained about the publication on the Company's institutional website

of a press release, containing their personal data relating to the employment relationship and the adoption of disciplinary measures against them.

In particular, it was complained that in the "News and Events" section of the Company's institutional website a press release of the twentieth century was published, with the following subject: "Ants case in San Giovanni Bosco and assignment of urgent work, concluded the disciplinary process against the employees [name and surname of the complainant] and [name and surname of another employee of the Company]. For both, the sanction of suspension from service with deprivation of salary has been imposed ".

This circumstance was ascertained by the Guarantor's Office (see service report of the XXth, in documents).

2. The preliminary activity.

With a note of the XX (prot. No. XX), the Office, on the basis of the elements acquired, the verifications carried out and the facts that emerged as a result of the investigation, notified the Company, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in art. 58, par. 2, of the Regulation, concerning the alleged violations of art. 5, par. 1, lett. a) and c), 6, par. 1, lett. c) and e), para. 2 and 3, lett. b) of the Regulations, and 2-ter, paragraphs 1 and 3, of the Code (in the text prior to the amendments made by the Legislative Decree of 8 October 2021, n.139, in force at the time of the facts subject of the complaint), inviting the aforementioned owner to produce to the Guarantor defensive writings or documents or to ask to be heard by the Authority (art. 166, paragraphs 6 and 7, of the Code, as well as art. 18, paragraph 1, of the l. 24 November 1981, n. 689).

With a note from the twentieth century, the Company, through its lawyer, presented its defense brief, declaring, in particular, that:

"The personal information relating to the complainant refers to the assumption against him of a disciplinary measure in the context of the case that has had wide media coverage throughout the national territory relating to the infestation of ants at the P.O. San Giovanni Bosco di Napoli and the illegitimate assignment of works in maximum urgency ";

"The clamor [...] caused by the spread of the news [...] pushed [...] all the competent authorities to clarify the incident and the press to follow [...] the evolution of the affair";

"on [...] December 2018, on" La Repubblica Napoli ", an interview was published by the [complainant] entitled" [name and surname of the complainant] - Ants and neglect but I am not a scapegoat ", with a photo of him in the foreground [...] [he

issued certain statements regarding the facts which had occurred];

"On the twentieth day, the major newspapers announced the removal of the [complainant] from the position of Health Director of P.O San Giovanni Bosco, established by the new Commissioner [of the Company] (see article taken from the "Corriere del Mezzogiorno" entitled "First act of [...]: the medical director of the ant hospital removed "[...]). In the article published in il "Mattino" we read: "[name and surname of the complainant] the ant grill does not pass [...]" (article of 15 February entitled "Ants and cockroaches change the directors of two hospitals - Hospitals in chaos change the top "[...]);

"The XX, the A.S.L Napoli 1 Centro, with provision no. 31, imposed on the [complainant] \ the disciplinary sanction of suspension from service and salary [...]"

"As soon as the notice of initiation of the sanctioning procedure was received, the [Company] immediately proceeded to remove the press release of the XXth. Indeed [...] already in the early afternoon of the 20th the press release was removed ";

"On the date of the twentieth, the news relating to the complainant appeared on the institutional website, in the "Events and News" section, on the eighteenth page and was therefore not easy to find";

"The same news, then, appeared to have received, from the date of the twentieth, a total of 269 views, which is a small number when considering the users of the [Company]";

"The decision of the [Company] was taken following an articulated affair that had a wide media coverage and which directly involved the [complainant], who was repeatedly questioned [by the press]";

"The [Company], [...] [in relation to] the very serious facts ascertained, [...] felt compelled to give an important message of legality after its image and dignity had been harmed, and, again moreover, the primary right to health of patients was involved [...] [, believing] that it was necessary to provide all useful information on the actions undertaken, first of all, to patients, whose rights were [...] harmed ";

"Significant reasons of public interest are therefore the basis of the Company's decision to publish [the press release in question] [...] [, having therefore been] complied with [ta] the condition established by the same provision contained in the art. 6, lett. e), of EU Regulation 679/16 [...] [, as the Company] aimed to pursue purposes of public interest related to the protection of the primary right to health and the principle of legality ".

At the hearing, requested by the Company pursuant to art. 166, paragraph 6, of the Code and held on XX (minutes prot. No. XX of the XX), the Company also declared, in particular, that:

"The unfortunate story that involved some hospital patients has had a wide echo in the national press and has also had implications on the judicial level, as there have also been interventions by the government, aimed at clarifying the facts that have occurred. The matter which is the subject of the complaint must therefore be framed in this specific context ";

"The complainant himself had given interviews to well-known newspapers, taking a position on the facts that occurred, making the story public. Consequently, the ASL statement was also issued to follow up on the declarations of the interested party and to inform the community, already aware of the facts, about the developments of the affair and the measures taken to remedy the very serious episode ";

"The interested party has not in any case suffered any prejudice as a result of the publication of the press release in question";

"On XX, the complainant, who is still in service at the Company, sent a note to the same, stating that following the clarification provided by the Company, he believes that the reasons for which he had to time proposed complaint to the Guarantor, hoping that the proceedings be archived ".

3. Outcome of the preliminary investigation.

The personal data protection discipline provides that public subjects, in the context of the work context, may process the personal data of the interested parties, also relating to particular categories, if the processing is necessary, in general, for the management of the employment relationship. and to fulfill specific obligations or tasks provided for by the law or law of the Union or of the Member States (art. 6, par. 1, lett. c), 9, par. 2, lett. b) and 4 and 88 of the Regulation). The processing is also lawful when it is "necessary for the performance of a task of public interest or connected to the exercise of public authority vested in the data controller" (Article 6, paragraph 1, letter e), 2 and 3, and art. 9, par. 2, lett. g), of the Regulations; art. 2-ter of the Code, in the text prior to the changes made by Legislative Decree 8 October 2021, n. 139).

European legislation provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of the [...] Regulation with regard to processing, 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, par. 2, of the Regulation). In this regard, it should be noted that the dissemination of personal data (such as publication on the Internet) by public entities is permitted only when provided for by a law or, in the cases provided for by law, by regulation (cf. . art.2-ter, paragraphs 1 and 3, of the Code, in the text prior to the changes made by Legislative Decree no. 139 of 8 October 2021, in force at the time of the facts subject of the complaint).

The data controller is required, in any case, to comply with the principles of data protection, including that of "lawfulness, correctness and transparency" as well as "data minimization", on the basis of which personal data must be "processed in a lawful, correct and transparent manner towards the data subject" and must be "adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed" (Article 5, paragraph 1, letter a) and c), of the Regulation).

In this context, it is noted that the fact that the complainant had made statements to the press regarding the same facts to which the disciplinary measures adopted against him refer cannot justify the disclosure of the complainant's personal data on the institutional website of the complainant. Agency. As highlighted above, public entities may, in fact, disclose personal data only where permitted by a law or, in the cases provided for by law, by regulation (Article 2-ter, paragraphs 1 and 3, of the Code, in the previous text to the changes made by Legislative Decree 8 October 2021, n.139), to nothing, noting that the same data have already been disclosed elsewhere, even by the interested party himself, for other purposes (see provision July 2, 2020, n.118, doc. web n. 9440025). In any case, the statements made by the complainant to the press (2018) are prior to the date on which the disciplinary measures were adopted against him (XX) and, therefore, the publication of the press release involved the dissemination of personal data in part other than those relating to the statements reported in the press.

Nor does it matter what the Company affirmed regarding the fact that the publication of the press release in question was put in place due to the general need, represented in the declarations to the documents, to pursue purposes of public interest connected to the protection of the right to health and of legality, since the processing - for the above - lacking a suitable legal basis (see, in particular, provision of February 25, 2021, no. 68, web doc. no. 9567429 and the previous provisions referred to therein).

The disclosure on the Company's institutional website of the personal data of the complainant and another worker employed by the same, relating to events related to the employment relationship and disciplinary measures adopted against the interested parties, took place, therefore, from XX to XX, in a manner that does not comply with the principle of "lawfulness, correctness and transparency" and in the absence of an appropriate legal basis, in violation of Articles 5 and 6 of the Regulations, as well as 2-ter of the Code (in the text prior to the amendments made by Legislative Decree 8 October 2021, n.139).

4. Conclusions.

In light of the aforementioned assessments, it is noted that the statements made by the data controller during the investigation □ the truthfulness of which one may be called to respond pursuant to art. 168 of the Code □, although worthy of consideration, do not allow to overcome the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the dismissal of this proceeding, since none of the cases provided for by the 'art. 11 of the Guarantor Regulation n. 1/2019. It is also represented that for the determination of the applicable law, from a temporal point of view, the principle of legality referred to in art. 1, paragraph 2, of the l. n. 689/1981 which states that "the laws that provide for administrative sanctions are applied only in the cases and times considered in them". This determines the obligation to take into consideration the provisions in force at the time of the violation committed, which in the case in question - given the permanent nature of the alleged offense - must be identified at the time of cessation of the unlawful conduct, which occurred after the date of 25 May 2018 in which the Regulation became applicable and the Legislative Decree 10 August 2018, n. 101 came into effect. In fact, from the preliminary investigation it emerged that the disclosure of the personal data of the interested parties ceased on XX. Therefore, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing of personal data carried out by the Company for having disclosed the personal data of the complainant and another worker in violation of Articles 5 and 6 of the Regulations, as well as 2-ter of the Code (in the text prior to the amendments made by Legislative Decree 8 October 2021, n.139).

The violation of the aforementioned provisions makes the administrative sanction provided for by art. 83, par. 5, of the Regulation, pursuant to art. 58, par. 2, lett. i), and 83, par. 3, of the same Regulation and art. 166, paragraph 2, of the Code. In this context, considering, in any case, that the conduct has exhausted its effects, given that the disclosure of the personal data of the interested parties has ceased, the conditions for the adoption of further 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 ancillary sanctions (articles 58, par. 2, lett. I and 83 of the Regulation; art. 166, paragraph 7, of the Code).

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the Regulations as well as art. 166 of the Code, has the power to "inflict an administrative pecuniary 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 single case "and, in this context," the College [of the Guarantor] adopts the injunction order, with which it also disposes with regard to the application of the ancillary

administrative sanction of its publication, in whole or in excerpt, on the website of the Guarantor pursuant to Article 166, paragraph 7, of the Code "(Article 16, paragraph 1, of the Guarantor Regulation no. 1/2019).

In this regard, taking into account art. 83, par. 3, of the Regulations, in this case the violation of the aforementioned provisions is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the Regulation.

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

In relation to the aforementioned elements, it was considered that the detected conduct had as its object the dissemination of personal data relating to events related to the employment relationship, despite the numerous indications given by the Guarantor to all public entities since 2014 with the "Guidelines on the processing of personal data of workers for the purpose of managing the employment relationship in the public sphere "(provision no. 23 of June 14, 2007, web doc. no. 1417809). The considerable lapse was also taken into account of time in which the personal data of the interested parties have been disseminated (from XX to XX).

On the other hand, it was favorably taken into consideration that the violation did not concern particular categories of personal data and that it involved only two interested parties. The owner then promptly took action to remove the data subject to the complaint as soon as he became aware of the violation, giving full cooperation during the investigation. For the purposes of assessing the level of damage suffered by the interested parties, it was also considered that, although the complainant has not formally withdrawn his complaint, the Company has given account, during the investigation, of the fact that, following of the clarifications provided to him, the complainant wished to close the proceedings (see note prot. XX of XX, filed by the Company). Furthermore, there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the pecuniary sanction in the amount of € 6,000 (six thousand) for the violation of Articles 5 and 6 of the Regulations, as well as 2-ter of the Code (in the text prior to the changes made by Legislative Decree 8 October 2021, no. 139), as a withholding administrative fine, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account the considerable period of time during which the aforementioned data were available on the network, it is also believed that the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by art.

166, paragraph 7, of the Code and art. 16 of the Guarantor Regulation n. 1/2019.

Finally, it is noted that the conditions set out in art. 17 of Regulation no. 1/2019.

WHEREAS, THE GUARANTOR

declares, pursuant to art. 57, par. 1, lett. f), of the Regulations, the unlawfulness of the processing carried out by the Company for violation of Articles 5 and 6 of the Regulations, as well as 2-ter of the Code (in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021), within the terms set out in the motivation;

ORDER

to the A.S.L Napoli 1 Centro, in the person of the pro-tempore legal representative, with registered office in Via Comunale del Principe, 13 / a - 80145 Napoli, C.F. 06328131211, to pay the sum of € 6,000 (six thousand) as a pecuniary administrative sanction for the violations indicated in the motivation. 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 sanction imposed;

INJUNCES

to the aforementioned Company, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of € 6,000 (six 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 l. n. 689/1981;

HAS

pursuant to art. 166, paragraph 7, of the Code, the publication of this provision on the website of the Guarantor, considering that the conditions set out in art. 17 of the Guarantor Regulation n. 1/2019.

Pursuant to art. 78 of the Regulation, 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision, it is possible to 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 applicant resides abroad.

Rome, January 13, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei