

Injunction order against Uninettuno International Telematic University - December 16, 2021

Record of measures

n. 448 of December 16, 2021

## 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 dr. Claudio Filippi, Deputy Secretary General;

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.gpdp.it](http://www.gpdp.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 university professor, represented that he had sent his curriculum vitae for the purposes of a selection procedure initiated by the Uninettuno

International Telematic University (hereinafter, the "University" or "Athenaeum"), for the assignment of an assignment as a contract lecturer; following the aforementioned communication, the curriculum vitae (also containing personal data such as residential address, telephone number, e-mail address, PEC address, marital status and signature) was published on the website of the University at least starting from June 2018, having also been indexed on search engines, despite the fact that the contract with the University had never been finalized and the collaboration had never started. It was also complained that the complainant was mentioned on the same website as a professor of the University. received a communication from the data protection officer of the same, with which it was acknowledged that the University had removed its personal data from the website and had taken action for the purposes of de-indexing from search engines.

## 2. The preliminary activity.

With a note from the XXth, the University, in response to a request for information from the Guarantor (note prot. No. XX of the XX), stated, in particular, that:

in July 2017, the University had initiated negotiations with the complainant regarding a position as tutor teacher;

"On 25/07/2017 the [complainant] sent by e-mail to the University [...] his curriculum vitae and on 14/09/2017 he filled in the form for the collection of the data necessary for the management of the contractual relationship and handed it over to the [...] University ";

on 18 September 2017, "the [complainant] attended the meeting" of the Faculty Council, called, among other things, to discuss "his appointment as area teacher", and, on that occasion, "was appointed teacher give to";

the minutes of that session were approved in the subsequent session of February 5, 2018;

on 8 December 2017, the [complainant] "communicated [...] through p.e.c., that he had completed the program [intended for his teaching], and that he wanted to publish it in the area of the University website relating to the course [in question]" ;

"With an e-mail dated 21/03/2018, the University personnel office communicated to the [complainant] the schedule of the [...] videolessons assigned to him [...], which was followed up on 10/04/2018 the sending by e-mail of the letter of appointment for the realization of the aforementioned videolessons ";

"To this last communication, the [complainant] replied with p.e.c. of 16/04/2018, asking the University for clarification on the financial offer received, declaring himself available to evaluate only one other offer; then all further contact ceased ";

despite having the complainant requested the deletion of his personal data, "in 2019, the [complainant] published [...] on the

websites [of two other universities] his curriculum vitae, in which he reported [...] that he had been a contract professor of the University ";

"The processing of the personal data of the [complainant] and in particular the publication of his curriculum vitae on the [...] University website was necessary, regardless of the conclusion of the contract relating to the realization of the [...] video lessons, to fulfill the obligations legal requirements imposed by the rules on advertising for transparency purposes in the university environment (Legislative Decree no. 33/2013; Ministerial Decree 31/10/2007, no. 544; Directorial Decree 10/06/2008 no. 61) ";

the University "is a non-state telematic university, authorized pursuant to Ministerial Decree April 17, 2003 to issue academic qualifications pursuant to art. 3 of the Ministerial Decree of 22 October 2004 n. 270 ";

"Art. 1 of the law 29 July 1991 n. 243 establishes that legally recognized [...] non-state universities operate within the provisions of the last paragraph of Article 33 of the Constitution and the laws concerning them, as well as the general principles of university legislation as compatible ";

art. 2 of the Ministerial Decree (Miur) of 31 October 2007, n. 554 provides that "universities must make available a series of information, identified by Directorial Decree, to be highlighted in the public training offer for comprehensive knowledge by students and all interested parties [...]";

"In the Directorial Decree of 10 June 2008, n. 61 and in its Annex, MIUR has listed all the information that universities are required to publish on their website before the start of teaching activities and, in any case, by October 31 of each year (as required by art. ) and, among these, in paragraph 1.2, paragraph 10 of the Annex are also identified: [...] the scientific curricula of the teacher in charge and of any other teachers involved [...] ";

"Therefore, in compliance with the aforementioned provisions [...], the University [...] had to publish on its website, before the start of the teaching activities, also the appointment of Professor of the area of the [complainant], his curriculum vitae and its completed program ";

"This information must remain public for the entire duration of the course, in anticipation of the conclusion of the contract relating to the realization of the [...] videolessons";

"However, following the objections of the [complainant], received through p.e.c. of the twentieth century, the University [...] considered prudentially to remove them ".

With a note dated 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 University, 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. c), of the Regulations, inviting the aforementioned holder to produce defensive writings or documents to the Guarantor 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 . November 24, 1981, n. 689).

With a note of the XX (prot. No. XX), the University presented its defense brief, declaring, in particular, that:

"[...] Consent still represents today one of the legal bases on which the lawfulness of the processing is based. Through the consent, the owner and the interested party can expand or restrict the scope of the lawful processing of personal data, a faculty ontologically excluded in the case of processing carried out by public entities ";

"[...] the private nature of the University [...] and the consent expressed by the [complainant], in accordance with the aforementioned art. 23 [of the Code, in the text prior to the changes made by Legislative Decree 101/2018], justified the dissemination of the personal data of the interested party, through the publication of the teacher's curriculum vitae on his website, provided for by specific sector regulations also applicable to non-state telematic universities [...] (Ministerial Decree 31/10/2007 n. 544; Directorial Decree 10/06/2008 n. 61) ";

"The acquisition of the [...] curriculum vitae took place at the conclusion of the negotiations for the appointment of an area professor", having been the same "requested by the University for the formalization of the already defined assignment";

"The [complainant] then sent his curriculum vitae to the University [...] knowing that the purpose of collecting the document was not the selection of potential candidates for a job, but the formalization of the assignment and therefore the fulfillment the legal obligations of publication on the University website, a formality well known to him having already carried out this activity in the past for other universities, as shown in the aforementioned curriculum vitae ";

"Following the appointment of area teacher [...], the [complainant] participated on 25/09/2017, in the training activity [...] for new teachers and tutors";

"On that occasion, the [complainant] received the information on the processing of his personal data and all other information concerning the methods of carrying out the distance learning activities, as well as the models of distance teaching and learning, and internet communication , contained in the "Tutor's Kit";

"In particular, [with the]" Internet communication model "the [complainant] was informed on the methods of drafting the curriculum vitae (biographical sheet), on its publication on the University website and on the need to amend it from certain information personal such as: residential address, tax code and telephone numbers ";

"Therefore, the [complainant] was fully aware of every aspect inherent to the processing of personal data contained in his curriculum vitae. Nevertheless, the same did not consider it necessary to send a new curriculum vitae, devoid of the information that is the subject of the dispute [...] "

"In fact, on 08/12/2017, the [complainant] sent [...] only the program of the course he should have taken, declaring himself available to publish it on the corresponding page of the University website [...]";

"Therefore, the interested party has given express consent from the beginning to the processing of all the data contained in his curriculum vitae, documented in accordance with art. 23 of the repealed Code by sending the University of his e-mail containing this document as an attachment ";

"After providing the information regarding the methods of drafting the biographical sheet, the University considered in total good faith that the consent already expressed by the [complainant] had not been revoked and therefore, it has disclosed the related personal data as long as this consent it has not actually been revoked ";

art. 5, par. 1, lett. c) of the Regulations "does not exclude that the adequacy, relevance and indispensability of personal data can also be assessed with respect to any purposes that the interested party pursues, provided they are the expression of his / her free and autonomous choice. In the case in question, the University has certainly limited the request for personal data aimed at publishing the curriculum vitae of the area teachers and tutors to the strictly necessary data. The [complainant] instead wanted to extend the treatment to other data ";

"In any case, it must be considered that the processing activity began before the Regulation came into force [...]. Violations regarding the protection of personal data are not permanent administrative offenses [...], but are instant offenses whose effects may also persist over time. Consequently, the offense is considered already completed with the first action. In this case, the violation of art. 5 of the Regulation [...] ";

"The disputed treatment did not cause damage to the data subject and ceased immediately when the owner received the notice of the withdrawal of consent";

the alleged violation "depended exclusively on fault, since the University trusted in the provision of valid consent by the

interested party [...] In the specific case, the University removed, immediately after the request of the interested party, information regarding personal data, deleting it both from its website and from search engines ";

"The University has in any case demonstrated that it has implemented organizational security measures by preparing a staff training procedure and a document containing instructions for the correct compilation of the curriculum vitae intended for dissemination on the internet [...] and has provided since the preliminary phase a high degree of cooperation with [the] Authority ";

"the personal data involved in the alleged violation belong only to the category of common data".

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

"The relationship with the University was interrupted when there was no agreement on the salary. However, it cannot be denied that a qualified relationship between the University and the complainant had already been established [...] ";

"The University acted, in any case, in complete good faith, trusting in the effective start of the teaching activity. It was, however, a completely isolated case. [...] ".

### 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 the 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 8 October 2021, n. 139).

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, on a preliminary basis, that the statements made by the University are not relevant with regard to the fact that the complainant had given his consent to the publication of his curriculum vitae and the consequent dissemination of his personal data.

Neither the mere inclusion by the interested party of personal information in the curriculum vitae delivered to the University, nor the circumstance that the same had sent this document to the University can, in fact, amount to a "manifestation of free will, specific, informed and unequivocal "to the online dissemination of such information (art. 4, par. 1, n. 11) of the Regulation; cf. also art. 7 and recital nos. 32 and 33 of the Regulation).

Furthermore, in the working context, consent cannot, as a rule, "constitute a valid legal basis for the processing of personal data", as there is "an evident imbalance between the data subject and the data controller" (recital 43 of the Regulation ; see par. 21 of the "5/2020 Guidelines on consent pursuant to Regulation (EU) 2016/679" adopted on 4 May 2020 by the European Data Protection Committee, which states that "the imbalance of it also exists in the context of employment. Given the dependence resulting from the employer / employee relationship, it is unlikely that the data subject will be able to deny the employer consent to the processing of data without fear or risk of repercussions [...] Consequently, the Committee considers it problematic for the employer to process the personal data of current or future employees on the basis of consent, as this is unlikely to be freely given. part of the processing activities carried out in the workplace, the legitimate basis cannot and should not be the employee's consent [...] in consideration of the nature of the relationship between employer and employee ").

In any case, even in the presence of a legal basis that justifies the processing of data, compliance with the principle of "data minimization" requires that the processing operations only concern data "adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed "(art. 5, par. 1, lett. c), of the Regulation). In the present case, the

disclosure of some of the complainant's personal data, contained in his / her curriculum vitae (in particular, the residential address, telephone number, e-mail address, PEC address and state civil) cannot, on the other hand, be considered necessary for the purposes of fulfilling the transparency obligations inherent in the university system.

In this regard, already in the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other obliged entities", published in the Official Gazette. n. 134 of 12 June 2014 and in [www.gdpd.it](http://www.gdpd.it), doc. web n. 3134436, part two, para. 1 and 3.a., the Guarantor has clarified that, in application of the principle of "data minimization", even in the presence of a publication obligation, the subjects called to implement it cannot in any case disclose excess or irrelevant personal data (see, lastly, with regard to a similar case of disclosure of personal data contained in a curriculum vitae, provision no. 171 of 29 April 2021, web doc. no. 9682169). The laws that require the publication of the curriculum vitae cannot, therefore, in any case involve the dissemination of personal data that are not relevant with respect to the purposes of transparency pursued. With regard to the publication of the curriculum vitae of the holders of collaboration or consultancy assignments (see Article 15 of Legislative Decree no. 33 of March 14, 2013), the Guarantor therefore clarified that "before publishing on the institutional website the curricula, the data controller must [...] make a careful selection of the data contained therein ", failing to publish" excess data, such as personal contact details or the tax code of the interested parties, also in order to reduce the risk of so-called identity theft "(first part, par. 9.a.) (see the " FAQ on transparency "of the National Anti-corruption Authority, in particular no. 9.8, which states that the publication of the curriculum vitae of the holders of collaboration or consultancy assignments must be carried out by making "a careful selection of the data contained therein for the purpose of respecting the protection of confidentiality").

As it emerged during the investigation, the University has instead published the curriculum vitae of the complainant on its institutional website, failing to preventively obscure the data relating to the personal sphere of the same, which cannot be considered "adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed "(Article 5, paragraph 1, letter c), of the Regulation; with regard, in general, to compliance with the principle of data minimization when publishing documents online, albeit in different contexts, see, among others, prov. February 25, 2021, n. 69, doc. web n. 9565258; prov. 11 February 2021, n. 54, doc. web n. 9556625; prov. January 14, 2021, n. 22, doc. web n. 9543138; prov. 1 October 2020, n. 173, doc. web n. 9483375; prov. 3 September 2020, n. 154, doc. web n. 9468523; prov. 29



July 2020, n. 149, doc. web n. 9463997; prov. 9 July 2020, n. 140, doc. web n. 9451734; prov. 9 July 2020, n. 139, doc. web n. 9446659; prov. 2 July 2020, n. 120, doc. web n. 9440075; prov. 2 July 2020, n. 117, doc. web n. 9445324; prov. 12 March 2020, n. 50, doc. web n. 9365159; prov. February 13, 2020, n. 35, doc. web n. 9285411; prov. 6 February 2020, n. 27, doc. web n. 9283029; prov. January 30, 2020, n. 21, doc. web n. 9283014; prov. January 30, 2020, n. 20, doc. web n. 9302897).

The processing of such personal data, in a manner that does not comply with the principle of data minimization, has also led to a further and wider dissemination of the same, due to the indexing on search engines of the web page that hosted the curriculum vitae of the complainant.

Otherwise, with regard to the online dissemination of other personal data contained in the curriculum vitae, relating to the training and professional experience of the interested party, as well as to the mention of the complainant as professor of the University, considering the provisions on transparency of teaching activities, referred to by the University in its declarations (see also art. 15 of Legislative Decree no. 33 of March 14, 2013) and that, although the economic profiles of the collaboration had not yet been defined, the complainant "had [been] appointed area teacher ", having also participated in" the training activity [...] for new teachers and tutors "(see notes of the XXth), not having detected the illegality of the treatment in question, this profile is filed .

#### 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 establishes as "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 documents, it emerged that the disclosure of the complainant's personal data ceased in May

2019.

Therefore, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing of personal data carried out by the International Telematic University Uninettuno for having disclosed the complainant's personal data in a manner that does not comply with the principle of "data minimization" is found. to art. 5, par. 1, lett. c), of the Regulation.

The violation of the aforementioned provision 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.

In this context, considering, in any case, that the conduct has exhausted its effects, given that the dissemination of personal data relating to the complainant's private sphere has ceased, the conditions for the adoption of further corrective measures referred to in '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. l 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 provision is subject to the application of the pecuniary administrative sanction 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, also in light of the indications that, since 2014, the Guarantor has provided to all public entities in the "Guidelines on processing of personal data, also contained in administrative deeds and documents, carried out for the purposes of advertising and transparency on the web by public entities and other obliged entities ", referred to above. Account was also taken of the considerable period of time in which the complainant's personal data were disseminated.

On the other hand, it was favorably acknowledged that the violation did not concern particular categories of personal data and that it involved only one interested party. The owner then promptly took action to remove the data subject to the complaint as soon as he became aware of the violation, fully cooperating with the Guarantor during the investigation. 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 € 1,000 (one thousand) for the violation of art. 5, par. 1, lett. c) of the Regulations, as an administrative pecuniary sanction, pursuant to art. 83, paragraph 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account the extended 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 International Telematic University Uninettuno for violation of art. 5, par. 1, lett. c) of the Regulations, within the terms set out in the motivation;

ORDER

at the Uninettuno International Telematic University, in the person of the pro-tempore legal representative, with registered office in Corso Vittorio Emanuele II, 39 - 00186 Rome, Tax Code 97394340588, to pay the sum of Euro 1,000 (one 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 University, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of 1,000 (one 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, December 16, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE DEPUTY SECRETARY GENERAL

Philippi