[doc. web n. 9711517]

Provision of September 16, 2021

Record of measures

n. 322 of 16 September 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 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 4/4/2019, published in the Official Gazette n. 106 of 8/5/2019 and in 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. The complaint.

With a complaint of the XX, submitted pursuant to art. 77 of the Regulations, the publication, on the website of the I.C.S.Maurizio-Maria Montessori Institute of San Maurizio Canavese (TO), (hereinafter the "Institute"), was complained of,

where the complainant works as an employee , of the annual ATA personnel plan, concerning "the provision of working hours, the assignment of organizational and specific tasks, the intensification of work performance and those exceeding the compulsory hours and activities of training "adopted by the Institute, in which the request of the complainant was reported" to be able to postpone your entry into the workplace to 7.30 am justified by a feared difficulty in waking up derived, according to you, from taking drugs ". From the complaint it emerges that the person concerned requested "the Headmaster of the Istituto Comprensivo Statale M. Montessori S. Maurizio C.se (TO) through [its] trusted lawyer, the removal of the document [...] asking for its correction".

2. The preliminary activity

With a note of the twentieth, prot. n.XX following the request for information formulated by the Office with the note of the XX, the Institute represented that:

- "At the beginning of each school year it is a consolidated practice by the DSGA to call a series of meetings of the school collaborating staff of the entire Institute, also in the presence of the secretarial staff, in order to plan the planned activities as well as the organization of the various complexes, with the location of the staff and the scheduling of shifts. What is established in the aforementioned meetings is subsequently reported in the annual plan of activities ";
- "the request for postponement of the time of entry to work by [the complainant] had been publicly expressed by the same during the meeting held on XX [and] justified by an alleged difficulty in waking up due, according to her, to the taking medications. [...] This statement was made [...] in the presence of the DSGA, the administrative assistant in charge of ATA staff and all the school collaborators in service on that date and present at the meeting ";
- "on XX [the Institute] received communication from a trusted lawyer [of the complainant] in which the request for postponed entry of his client was reiterated [with attachment] a certification from the attending physician with the express indication of the drug taken ";
- the Activity Plan, containing the disputed sentence, was not published in the online register of the Institute, but "in the reserved area of ATA staff [to which] only [the complainant's] colleagues could access, who had been publicly informed by the same of their intentions, as well as the secretarial staff ";
- finally, while not deeming it to have adopted any behavior contrary to the legislation on the protection of personal data, the Institute has "deleted the final version of the document in question [...] of the sentence concerning a generic assumption of

drugs ".

On the basis of the elements acquired, the Office notified, with a note of the XX, (prot. No. XX), to the Institute, as data controller, 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, since the document containing the personal data, including health related data, of the complainant, even if published in a reserved area of the Institute's website, would have given rise, in the present case, to a communication of personal data to unauthorized third parties in violation of articles 5, par. 1, lett. a) and c), 6 and 9 of the Regulation and 2-ter and 2-sexies of the Code, and, in relation to the lack of appointment of the Data Protection Officer, and the consequent late communication of contact details to this Authority, the violation of art. 37 of the Regulation. Therefore, he invited the aforementioned owner 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 no. 24/11/1981).

The Institute sent its defense briefs, with a note of the XX, (prot. No. XX), representing, in particular, that:

- "the document containing the complainant's personal data" was present exclusively in the reserved area dedicated to the ATA staff of the institution and all ATA staff had been previously authorized to access these documents for reading, writing, deletion, communication ";

- "Only authorized personnel trained by the Owner can access the platform in the ATA area using unique login credentials: username and password. The personnel who access it do so by assignment as, being a secretariat, they manage this documentation ";

- “the request to postpone the time of entry to work by the complainant had been“ publicly expressed ”together with the reasons. The lady in the public meeting made a request to postpone the time of entry and justified this request explicitly in front of her colleagues, explaining the reasons ";

- “it should be noted that on the XXth there was also a request from the lawyer of the lady for time flexibility justified by the attached medical certificate and by the explicit name of the drug taken. Received on the 20th request by the lawyer of the lady to remove and correct the document, the Institute promptly proceeded to comply with this request on 2 December ";

- "it is acknowledged that personal data relating to the health of the complainant have been published in the area reserved for ATA personnel in the 2019/2020 annual plan, but this violation is not attributable in any way to the will to cause damage; in addition, the platform used is compliant with the GDPR and can be accessed by those present at the meeting and the data

processors authorized to access it ";

- "with reference to the lack of appointment of the Data Protection Officer and the late communication to the Guarantor, the difficulties inherent in the health situation of the last school year are noted, which slowed down the procedure for identifying and appointing the Data Protection Officer".

3. Applicable law.

3.1 The regulatory framework.

The personal data protection discipline provides that the employer can process personal data (Article 4, No. 1, of the Regulation), also relating to particular categories of data (see Article 9, paragraph 1 of the Regulation) , of workers if the processing is necessary, in general, for the management of the employment relationship and to fulfill specific obligations or tasks provided for by national or Union legislation, in particular for the management of the employment relationship (articles 6, paragraph 1, lett.c), 9, paragraph 2, lett. b) and 4; 88 of the Regulation; articles 2-sexies and 2-septies of the Code).

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) and paragraph 2 and 3 of the Regulations; 2-ter of the Code). This also with regard to processing operations consisting in the "dissemination" and "communication" of personal data.

More generally, 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 processing, in accordance with paragraph 1, letters c) and e), determining with greater precision specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing […] "(Article 6, paragraph 2 of the Regulation).

The employer, 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) and must process the data through "authorized" and "trained" personnel regarding access and data processing (articles 4, point 10), 29, and 32, par. 4, of the Regulation).

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

As is apparent from the deeds and declarations made by the data controller during the investigation as well as from the assessment made on the basis of the elements acquired, following the investigation and subsequent assessments of this Department, it appears that the Institute has published, in the area reserved for ATA personnel of its website, the 2019/2020

annual plan containing personal data, including health-related data, of the complainant.

Preliminarily, in recalling that, pursuant to art. 4 paragraph 1, no. 15 of the Regulation are considered health data "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 should be noted that the employer work may process, applying the conditions of lawfulness, the data of workers, exclusively through authorized and trained personnel, but always to the extent that the same information is necessary for the management of the employment relationship within the framework of the applicable regulatory provisions or to comply with specific legal obligations (see articles 5, 6, 9 and 88 of the Regulation).

In general, the personal data of employees cannot be disclosed to subjects other than those who are part of the employment relationship (see definitions of "personal data" and "interested party", contained in Article 4, paragraph 1, n.1) of the Regulation) and who are not entitled, due to the organizational choices of the data controller and the specific tasks performed, to process the same data, as authorized personnel (Article 29 of the Regulation and 2-quaterdecies of the Code; see, definition of "third party" contained in Article 4, paragraph 1, no. 10) of the Regulation,).

This principle, already contained in the "Guidelines on the processing of personal data of workers for the purpose of managing the employment relationship in the public sphere" of June 14, 2007, has been reaffirmed over time by the Guarantor in the context of decisions on individual cases and, more recently, with regard to the posting of duty shifts and working hours on notice boards positioned in rooms reserved for staff and also bearing data relating to health or in any case relating to personal events of colleagues (see last provision no. . 214 of 27 May 2021 web doc. 9689234 but see also provision no. 105 of 18 June 2020, web doc. 9444865 and, more generally, Provision containing the provisions relating to the processing of particular categories of data, pursuant to art.21, paragraph 1 of legislative decree 10 August 2018, n.101, n.146, of 5 June 2019, web doc. n.9124510, annex 1, par.1.5. lett. d)), as well as with regard to the processing carried out through the document management systems c with regard to documents containing personal data of employees, especially when relating to health data or personal events concerning the specific employment relationship between the person concerned and the administration (see prov. 50 of 11 February 2021, doc. web n. 9562866).

With regard to this case, in fact, not only secretarial staff but also all employees with administrative staff qualifications could access the reserved area of the Institute's website, dedicated to ATA staff. , technical and auxiliary - ATA (see notes XX and XX).

Although, therefore, the making available of the document in question, in its full version and also containing data relating to the health of the person concerned, took place in a reserved area of the Institute's website - not accessible to anyone such as to determine a dissemination of personal data -, the knowledge of the data contained therein occurred in any case in favor of a very large number, determined or determinable, of subjects, i.e. all the colleagues of the complainant belonging to ATA personnel, and not exclusively for the benefit of personnel only secretarial office.

For these reasons, this Institute has unjustifiably made the personal data of the person concerned, including health-related data, known to other employees, colleagues of the complainant (ie all ATA staff without distinction). Nor can the statement regarding the fact that the complainant's colleagues "had been publicly informed by the same of their intentions" (see note XX) can be considered relevant for the purposes of assessing the overall conduct of the employer.

In light of the foregoing considerations, the making available in the reserved area of the institutional website of the Institute, of the full version of the ATA Staff Activity Plan, which contained the express indication of the personal reasons for which the complainant had requested the postponing the time of entry into the workplace (i.e. the taking of drugs), has in fact made the personal data, including health related, of the complainant in favor of all the administrative, technical and auxiliary staff of the Institute (cf. . the definition of "communication" of personal data contained in Article 2-ter paragraph 4 letter a) of the Code). Considering that such personnel cannot be considered all, without distinction, authorized to process the data in question (see, most recently, provision of 11 February 2021, n.50 web doc. N. 9562866, quoted where it reads " even in the presence of internal practices or organizational choices that require all staff in service to be authorized to access [...], the provision of personal data - especially if relating to health or relating to events related to the individual employment relationship - of all staff in service in a generalized and indistinct way "; in a similar sense, see provision no. 105 of 18 June 2020, web doc. no. 9444865, cit.) the Institute, even in this single case, has therefore put in place a processing of personal data, in violation of Articles 5, 6, 9 of the Regulation and 2-ter and 2 sexies of the Code).

3.3. Failure to appoint the Data Protection Officer

From the documentation on file, it appears that the Institute has appointed a data protection officer only from 1 July 2020, following the specific request of the Office.

As a preliminary point, it should be noted that, based on art. 37, par. 1, lett. a) of the Regulation, the authorities and public bodies are obliged to designate a data protection officer and to communicate the contact details of the same to the supervisory

authority; in particular, this obligation is imposed "for all public entities, including schools" (see, guidance document on the designation, position and duties of the DPO in the public sphere adopted with provision no. 186 of 29 April 2021 , web doc. no. 9589104).

Taking into account that this obligation has been in force since the entry into force of the Regulation, i.e. from 25 May 2018, it is noted that the failure to designate this figure, for over two years, by the school, resulted in the violation of art. 37 of the Regulation (cf., provision 11 February 2021, n. 54, web doc. N. 9556625).

4. Conclusions.

In light of the aforementioned assessments, taking into account the statements made by the data controller during the investigation □ the truthfulness of which one may be called to answer pursuant to art. 168 of the Code □ it is noted that the elements provided by the data controller in the defense briefs 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 filing of this proceeding, not resorting to moreover, some of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

The violation of personal data, object of the investigation, by the Institute took place in full force of the provisions of the Regulation and the Code, as amended by Legislative Decree No. 101/2018, and which, therefore, for the purpose of determination of the regulatory framework applicable in terms of time (art. 1, paragraph 2, of the l. 24 November 1981, n. 689), these constitute the provisions in force at the time of the committed violation.

Therefore, the preliminary assessments of the Office are confirmed, and the unlawfulness of the processing of personal data carried out by the Institute is noted, in violation of Articles 5, 6, 9 and 37 of the Regulation and 2-ter and 2-sexies of the Code.

In this context, considering, in any case, that the conduct has exhausted its effects, given that the Institute declared that "received on the 20th request by the lawyer of the lady to remove and correct the document, [...] promptly proceeded to comply with this request on 2 December ", 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 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 individual 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 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 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, the particular nature of the unlawfully processed personal data referred to delicate personal events was considered, as well as the failure to comply with the indications that, for some time, the Guarantor has provided to public and private employers with the above Guidelines. recalled and with numerous decisions on individual cases (see Provv. of 5 June 2019 web doc. n. 9124510 and Provv. 18 June 2020, n. 105 web doc. n. 9444865).

On the other hand, it was considered that the matter concerned only one interested party and that the Institute, after a few days from the request of the same, eliminated the references contained in the document, also showing extensive collaboration with the Authority during the investigation of this proceeding. It was also favorably acknowledged that 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 € 2,500.00 (two thousand five hundred) for the violation of Articles 5, 6, 9 and 37 of the Regulation and 2-ter and 2-sexies of the Code, as an administrative pecuniary sanction, 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 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 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

WHEREAS, THE GUARANTOR

declares illegal the conduct held by the Comprehensive Institute I.C.S. Maurizio-Maria Montessori, described in the terms referred to in the motivation, consisting in the violation of articles 5, 6, 9 and 37 of the Regulation and 2-ter and 2-sexies of the Code

ORDER

to the Istituto Comprensivo I.C.S. Maurizio-Maria Montessori, in the person of the pro-tempore legal representative, with registered office in Via General Cabrera, 12 - 10077 San Maurizio Canavese (TO), Tax Code 92028680012, to pay the sum of € 2,500.00 (two thousand five hundred) as a pecuniary administrative sanction 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 sanction imposed;

INJUNCES

to the I.C.S. Maurizio-Maria Montessori Comprehensive Institute - without prejudice to the provisions of art. 166, paragraph 8 of the Code - of the Code, to pay the sum of € 2,500.00 (two thousand five hundred) 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 publication of this provision on the website of the Guarantor, also recognizing the existence of the conditions referred to in art. 17 of Regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

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, September 16, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE DEPUTY SECRETARY GENERAL

Philippi