

SEE NEWSLETTER OF 11 MAY 2022

[doc. web n. 9766469]

Injunction order against the Ministry of the Interior - February 24, 2022

Record of measures

n. 62 of February 24, 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, Prof. Ginevra Cerrina Feroni, vice president, Avv. Guido Scorza, member and dr. Claudio Filippi, Deputy Secretary General;

GIVEN the Regulation (EU) n. 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 (General Data Protection Regulation, hereinafter, "Regulation") ;

GIVEN the Legislative Decree 30 June 2003, n. 196, as amended by Legislative Decree 10 August 2018, n. 101, containing the Code regarding the protection of personal data (hereinafter the "Code");

GIVEN the Legislative Decree 18 May 2018, n. 51, which entered into force on 8 June 2018, implementing Directive (EU) 2016/680 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 by the authorities competent for the purposes of prevention, investigation, detection and prosecution of crimes or execution of criminal sanctions, as well as for the free circulation of such data and which repeals Council Framework Decision 2008/977 / JHA;

GIVEN the Decree of the President of the Republic of 15 January 2018, n. 15 containing the "Regulation pursuant to article 57 of legislative decree no. 196, containing the identification of the methods of implementation of the principles of the Code regarding the protection of personal data in relation to the processing of data carried out, for police purposes, by police bodies, offices and commands ";

GIVEN art. 49 of Legislative Decree no. 51/2018 according to which "Article 57 of the Code is repealed after one year from the date of entry into force of this decree. The decrees adopted in implementation of articles 53 and 57 of the Code continue to apply until the adoption of a different discipline pursuant to articles 5, paragraph 2, and 9, paragraph 5 "(paragraphs 2 and 3 of article 49 cit.) ;

GIVEN the Regulation of the Guarantor 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;

Professor Ginevra Cerrina Feroni will be the speaker;

WHEREAS

1. The story.

Mr. XX filed a complaint with the Guarantor, complaining about the illegal processing of data by the Police Headquarters of XX for the dissemination of photos portraying him in various press organs, "unduly made available to the journalists of the Mobile Squad of the Police Headquarters of XX ". Specifically, the complainant reported that: "1) On 31.01.2020 an article was published in the online newspaper" XX "signed by Nicola Cendron, in which the arrest of Mr. XX occurred on August 18, 2019. (...) In support of the aforementioned article, (...), a frame of the video surveillance cameras was published, from which it is not possible to trace the person of the XX, and the mugshot of the same, in which the same is fully identifiable; 2) On January 31, 2020, the newsletter of Antenna 3, A3 News Treviso, broadcast a service (...) in which it acknowledged, mentioning the personal details of the interested party, of the news of the execution of the precautionary custody order in prison charged to XX. As can be seen clearly from the service, the news was spread by the Director of the Flying Squad of XX XX. In the report produced by Antenna 3 you can see distinctly images relating to the investigation file and, specifically, frames relating to the video surveillance cameras and mug shots of Mr. XX "; 3) On 1 February 2020, the newspaper "XX", Treviso edition, published an article signed by Alberto Beltrame (...) in which it acknowledged the notification of the order of custody in prison against Mr. XX (...). This article is also accompanied by a series of video surveillance camera frames, from which it is not possible to clearly recognize the XX, and by a mugshot of the same, in which XX is portrayed in a frontal position and in which it is fully recognizable. ". Copies of the articles published by the on-line newspaper "XX" (referred to in the aforementioned point 1) and by the newspaper "XX" (referred to in the aforementioned point 3) were attached to the complaint.

Following the examination of the complaints, the Guarantor for the protection of personal data ("Guarantor") initiated an investigation against the Ministry of the Interior ("Ministry"), to which it sent a request for information, addressed also to the Police Headquarters of XX, with regard to the methods and purposes of the dissemination of the aforementioned images, the acts with which the decision to disseminate such images was (possibly) taken, as well as with regard to the technical-organizational measures adopted in order to guarantee the compliance with the regulations on the protection of personal data, with particular reference to the provisions of article 14 of the D.P.R. 15/2018 (protocol note n.39581 of 22 October 2020).

During the investigation launched against the newspapers, XX with a note dated 14 October 2020, informed that it had anonymized the article published in "XX" referred to in point 1 of the complaint, XX found with a note dated 21 October 2020, informing that the photo of the complainant had been removed from the archives and XX, with a note dated 26 October 2020, attached a copy of the contested television service referred to in point 2 of the complaint. As part of the same investigation, the complainant replied to the above, with a note dated 5 November 2020, to which he attached a copy of the summary annotation of the XX Police Headquarters relating to the overall investigation activity carried out regarding the identification of the author of the serial predatory events, consumed to the detriment of elderly women in the Treviso area, dated 18 September 2019. The Ministry responded to the aforementioned request for information of 22 October 2020, with note prot. n. 40688 of 7 November 2020, by means of which, in the premise that "the dissemination of information relating to the judicial police activity takes place with the consent of the judicial authority", represented on the merits: - "with regard to point 1) of the grievances of the complainant, unlike what is represented, in the article by Nicola Cendron published in "XX" on 31.01.2020, there is no photo of the arrested person, of which, moreover, the name is not even indicated, but only the initials XX "; - "with reference to the service broadcast on the Antenna 3 television channel on 31.01.2020 (point 2 of the grievances), (...) the images transmitted by TG Treviso are not related to the investigation file, but are part of the file that was it was specially prepared for consultation by the Flying Squad for the press conference. It is also noted that during the interview no reference was made to the details of the arrested person "; - "with regard to point 3) of the complaints, regarding the article published in the newspaper" XX "on 01.02.2020, signed by Alberto Beltrame, it should be noted that the photo of XX shown therein is not the one relating to his photo identification, as emerges from the comparison of the same with that contained in the SSA database.", attaching a print of the article published in" XX "and a copy of the article published in XX. Finally, the Ministry pointed out that

the diffusion of the effigy of Mr. XX to the press responded to an evident public interest, since it was a serial robber of elderly women who acted according to specific methodologies, as well as for justice purposes, in order to verify if other people had been able to recognize him as the perpetrator of predatory crimes committed against them.

Subsequently, the Authority sent to the Police Headquarters of XX, as well as to the Ministry, the aforementioned reply note from the complainant, transmitted during the proceeding relating to other owners, asking for any elements of evaluation on what it represents (note prot. 8787 of February 12, 2021).

With acknowledgment note prot. n. 10967 of 24 February 2021, the XX Police Headquarters specified that no further elements of evaluation emerged, that the matter in question concerned "judicial police activities and that the press conference indicated in the complaint was held with the consent of the Judicial authority for the purposes indicated in the note of this Office of 7 November 2020".

With note prot. n. 12698 of 5 March 2021, the Guarantor, on the basis of the elements acquired in the context of the investigation launched, and the subsequent assessments carried out, notified the Ministry, as data controller, pursuant to article 42, paragraph 4, of the Legislative Decree no. 51/2018, 166, paragraph 5, of the Code and 12 of the Reg. Of the Guarantor n. 1/2019, the initiation of the procedure for the adoption of the measures referred to in Articles 37, paragraph 3, and 42 of Legislative Decree no. 51/2018, inviting the aforementioned owner to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (art.166, paragraphs 6 and 7, of the Code; art.18, paragraph 1, of law no. 689 of 24/11/1981; Article 13, paragraph 3, Reg. of the Guarantor n. 1/2019).

In particular, the Office found that the Ministry has put in place a processing of the personal data of the person concerned, in the manner described above, in violation of Article 3, paragraph 1, lett. a) of Legislative Decree no. 51/2018, in conjunction with articles 5 of Legislative Decree no. 51/2018 and 14 of the Presidential Decree n. 15/2018, violation that made applicable the administrative sanction provided for in Article 42 of Legislative Decree no. 51/2018. In the same communication initiating the procedure, the Ministry was represented that, during the investigation launched against the newspapers, "XX found with a note dated 14 October 2020, informing that it had anonymized the article published in" XX "(referred to in point 1 of the complaint)" and that "Differently from what is represented by this Ministry, however, it is ascertained that the image and personal details of the complainant, published on the site" XX "on January 31, 2020, were deleted only in October 2020 (see note of XX of 14 October 2020 cit.) and that in the television service Antenna 3 of 31.01.2020 the personal details of the

interested party are clearly reported (see note of XX of 26 October 2020 cit.) "(Page 6 of the note of March 5, 2021 cit.).

Following the note containing the disputes pursuant to Article 166 of the Code, the Police Headquarters of XX sent a written defense, with note prot. n. 13155 of 1 April 2021, which reads: "it is again highlighted that, unlike what the complainant represents, in the article by Nicola Cendron published in" XX "on 31.01.2020, no photo of the arrested, whose name was not even indicated, but only the initials XX ". It was also shown that "the summary sheet used, for consultative purposes, by the Manager of the Flying Squad cannot be assimilated to the complete illustration contained in the summary annotation of the investigation provided by the complainant, since it is a police act judicial (relating to the reconstruction, also for identification purposes, of the alleged serial thief) held by the defender of the current claimant for other purposes, connected with the defense. This act was not and has never been disclosed by the aforementioned Manager and its reference, therefore, appears to be misleading. Finally, without prejudice to the existence of the agreement with the judicial authority for the press conference in question, the diffusion of the effigy of Mr. XX, in the opinion of this Office, appears to have taken place in accordance with Legislative Decree no. 51/2018, in particular, of art. 5, paragraph 1, which establishes the lawfulness of the processing of personal data if necessary for the execution of a task of a competent authority for the purposes of prevention, investigation, detection and prosecution of crimes or execution of criminal sanctions. The information given during the press conference by the Manager of the Flying Squad, in fact, responded to an evident public interest, being a serial robber of elderly women who acted according to specific methodologies, as well as for police and justice purposes, in order to verify if other people had been able to recognize him as the perpetrator of predatory crimes committed to their detriment, in compliance with current legislation. ".

2. Outcome of the preliminary investigation and applicable regulations.

From the examination of the journalistic articles and the television service cited, as well as from the examination of the statements made by the owner during the procedure, it is ascertained that the Ministry has carried out the processing of the complainant's data - consisting in the disclosure of the foreground image and of the generalities of the XX, who had already been in prison since August 2019 - during a press conference in which the further restrictive measure was announced, against the same complainant, following further investigations concerning other predatory events.

After this press conference, unlike what the data controller represents throughout the proceedings (according to which "in the article by Nicola Cendon published in" XX "on 31.01.2020, there is no photo of the arrested person, of the which, moreover, is

not even indicated the name, but only the initials XX ", (most recently, with a defensive writing dated 1 April 2021), it is established that the image and the personal details of the complainant have been published on the site" XX "from 31 January 2020 to 14 October 2020 (see note of XX of 14 October 2020 cit.), As well as on XX, and that in the Antenna 3 television service of 31.01.2020 the personal details of the interested party were clearly reported (see . note of XX of 26 October 2020 cit.). In the communication of the initiation of the procedure (see Annex 10), however, the Ministry was informed that the article published in "XX" had been subject to subsequent anonymization by of the publishing company the Ministry, which has not submitted any application for access to the proceedings, reiterated that the aforementioned article did not contain either the photo or the personal details of the person concerned.

It is also ascertained that the images transmitted by the contested television service "are part of the card that was specially prepared for consultation by the Mobile Squad for the press conference" (see note of the Ministry of November 7, 2020 cit.)

And that some images reported in the television service were present "also" in the summary annotation of the Police Headquarters of XX of September 18, 2019, by means of which an appropriate precautionary measure against the XX was requested (see note of the complainant of November 5, 2020 cit. , sent to the Ministry with a note from the Guarantor of 12 February 2021). Although, therefore, during the interview - reported in the report broadcast on the Antenna 3 television channel on 31.01.2020 - no mention was made of the generalities of the arrested person (as the Ministry represented during the proceedings, most recently with a defensive deed of 1 April 2021), it is ascertained that the various information present in the television service referring to the person concerned, including the personal details and the images in question, were acquired from the card specially prepared by the Police Headquarters concerned for the aforementioned press conference (see defensive letter of 1 April 2021).

Finally, it is ascertained that at minute 1.15 of the aforementioned service two photos of the XX appear in frontal position, one of which is full-length and with arms outstretched against a wall, inserted in a document in which, accompanying the same images , we read: "It is highlighted that one of the victims who recognized him is the protagonist, in spite of himself, of what is certainly the most annoying and most serious episode in terms of criminal unscrupulousness of the twentieth century".

That said, the following is considered applicable to the treatment in question: Directive (EU) 2016/680, which in the preamble recalls the Charter of Fundamental Rights of the European Union, as well as the European Convention on Human Rights (see cons . 1 and 46 Directive); the Legislative Decree n. 51 of 18 May 2018, implementing the EU Directive 2016/680 relating to

the protection of individuals with regard to the processing of personal data by the competent authorities for the purposes of prevention, investigation, detection and prosecution of crimes or execution of sanctions penalties, as well as the free circulation of such data; the Decree of the President of the Republic of 15 January 2018, n. 15 which identifies the methods of implementation of the principles of the Code relating to the processing of data carried out, for police purposes, by police bodies, offices and commands (still in force pursuant to Article 49 of Legislative Decree no.).

The legislative decree n. 51/2018 establishes, in particular, that personal data are "processed lawfully and correctly" (Article 3, paragraph 1, letter a) of Legislative Decree no. 51/2018) and that the processing is lawful if it is necessary for the execution of a task of a competent authority for the purposes of prevention, investigation, detection and prosecution of crimes or execution of criminal sanctions (Article 5, paragraph 1, Legislative Decree no. 51/2018). Furthermore, personal data are "b) collected for specific, express and legitimate purposes and processed in a manner compatible with these purposes; c) adequate, relevant and not excessive in relation to the purposes for which they are processed "(Article 3, paragraph 1, letters b) and c)) and the owner is responsible for compliance with these principles (Article 3, paragraph 4) . With particular regard to the disclosure of personal images, the D.P.R. n. 15/2018 provides that "the dissemination of personal images is permitted when the person concerned has given his consent or is necessary for the protection of life or physical safety or is justified by the need for justice or the police; it is in any case carried out in such a way as not to prejudice the dignity of the person. " (Article 14, paragraph 2, Presidential Decree no. 15/2018). Moreover, to date no communication appears to have been made to the Guarantor, pursuant to paragraph 3 of the aforementioned article 14, according to which "the Guarantor is informed of the general directives adopted at national level on the dissemination of personal data or images".

3. The jurisprudence of the ECtHR.

More generally, the dissemination of an image of a person subject to coercive measures constitutes a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), if it does not take place in compliance with the conditions set out in art. 8 of the ECHR for which "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There can be no interference by a public authority in the exercise of this right unless such interference is provided for by law and constitutes a measure which, in a democratic society, is necessary for national security, public security, the economic well-being of the country, to the defense of order and the prevention of crimes, the protection of health or morals, or the protection of the rights and freedoms of others ". It must therefore be examined

whether such interference is provided for by law, pursues a legitimate aim and is proportionate to the aim pursued (ECtHR *Toma v. Romania*, n. 42716/02, 24 February 2009, § 92; *Khoujine and others v. Russia*, no. 13470/02, 23 October 2008, § 117; *Gurgenidze v. Georgia*, no. 71678/01, 17 October 2006, § 57; *Sciacca v. Italy*, no. 50774/99, 11 January 2005, § 28 / 29). The ECtHR therefore examined this interference, in order to establish whether it is provided for by the law, pursues a legitimate aim and is proportionate to the aim pursued (ECtHR *Toma v. Romania*, n. 42716/02, 24 February 2009; *Khoujine and others v. Russia*, no. 13470/02, 23 October 2008; *Gurgenidze v. Georgia*, no. 71678/01, 17 October 2006; *Sciacca v. Italy*, no. 50774/99, 11 January 2005, § 28/29).

As regards the examination of the legitimate purpose, the ECtHR stated that, in order to justify such a limitation of the right to privacy, consisting in the publication of a photo relating to subjects subjected to pending criminal proceedings, there must be valid and convincing reasons (*Khoujine and others v. Russia*, cit., § 117; *Toma v. Romania*, n. 42716/02, 24 February 2009, § 92). In the aforementioned judgments, in one case, the authorities had provided the press with a photo of an interested party in custody at the time, in another case, they had allowed the press to access the police premises where another interested party was in arrest. Taking into account the fact that the applicants were not fugitives, were in detention and the process had not yet begun, the Court found the violation of art. 8 ECHR as the interference did not pursue any legitimate purpose, not aiming to protect any interest of justice, such as ensuring the applicant's appearance at the trial or preventing offenses of a criminal nature (*Khoujine and others v. Russia*, cit., § 117; *Toma v. Romania*, n. 42716/02, 24 February 2009, § 92).

As for the proportionality of the measure adopted, the ECtHR found its jurisprudence on the publication in the press of images or videos of public figures to be not applicable *mutatis mutandis* to cases in which such publications concern persons accused in the context of criminal proceedings, not considered "public figures" for the sole fact of being part of a criminal trial, but "ordinary people", who must therefore enjoy greater protection of the right to private life (*Sciacca v. Italy*, cit., § 28 / 29 and *Gourguénidzé v. Georgia*, cit., § 57). It follows that, in this case, no obvious public interest in the dissemination of the images in question can be recognized, as the Ministry maintains, for the sole fact that it was a "serial robber of elderly women who acted according to specific methodologies" (cf. defensive letter of April 1, 2020 cit.).

It must also be taken into account that persons subjected to judicial proceedings enjoy the additional protection deriving from the "presumption of innocence" pursuant to art. 27, paragraph 2, of the Constitution (see articles 6, paragraph 2, ECHR, 48 CDFUE, cons. 31 of the EU Directive 2016/680). If it is therefore legitimate to provide public opinion with as complete

information as possible on those aspects of the investigation that are no longer covered by secrecy, it is always necessary to take into due consideration the presumption of innocence and the dignity of the persons under investigation (v. circular of the Public Prosecutor of Naples n.4 of 19 December 2017).

4. The processing of data and the dignity of the person.

Considering this, also taking into account the supranational provisions and the jurisprudence of the ECtHR cited, the treatment in question, consisting in the disclosure of the image of the person concerned in the aforementioned context, was not "necessary" for the performance of a task of a competent authority for the purposes of prevention, investigation, detection and prosecution of crimes or execution of criminal sanctions (see Articles 3, paragraph 1, letter a) and 5 of Legislative Decree no. 51/2018). In this regard, the Ministry did not demonstrate in the course of the proceedings before the Guarantor the actual police needs underlying the disclosure in question, nor can this need be recognized in the generic intention of "verifying whether other people had been able to recognize him as the author of predatory crimes committed against them "(see note of the Ministry of November 7, 2020 cit. and defensive letter of April 1, 2021 cit.), devoid of any element of concreteness and specificity that could justify a treatment such as the one in question.

In the present case, the person concerned was not a fugitive, but rather had already been in detention for some months and the elements that emerged during the investigation did not demonstrate any actual need, for the execution of police duties, to disclose the photo that portrayed the same.

Furthermore, it should be noted that the images in question, inserted in the form prepared by the Flying Squad for the press conference (see notes prot. N. 40688 of 7 November 2020 and prot. 13155 of 1 April 2021), appear to have of images acquired during his detention. The same appears depicted in a frontal position (in one, full-length and with his arms outstretched against a wall) and in the video in question these images are accompanied by a text that gives an account of the recognition by one of the victims of the concerned as the perpetrator of the crimes subject to judgment.

In this regard, as recalled by the Supreme Court of Cassation, the dignity of the human person must be protected in every situation, especially "when the person finds himself in a situation of momentary inferiority that makes him particularly exposed and vulnerable, in order to prevent the legitimate and indeed protected even at a constitutional level, the dissemination of news is carried out in a free humiliating manner towards the subjects involved. In fact, the mugshot was created with a specific purpose (to identify a subject in the police file) and for this reason it must comply with certain standard requirements for which,

due to the forced position made to assume the subject portrayed, due to the fact that it bears numerical indications in superimposition suitable for to identify the person portrayed, unequivocally subjected to a restrictive measure of freedom, due to the context of place and fact in which it was taken, it portrays a person against his will in an objectively humiliating situation in which he cannot oppose nor the release of the photos or other identification practices in other mortifying ways "(Cass. Civ., section III, June 6, 2014 n. 12834). In this case, although the images in question are not those relating to the photo-reporting of the complainant, as declared by the Ministry (see note of 7 November 2020 cit.), It should be noted that all the other elements mentioned by the Supreme Court are still present (forced position of the subject, portrayed in the foreground, without his consent and in an objectively humiliating situation), to which is added, in the video in question, the caption of the recognition of the same that was made by one of the victims.

Moreover, whether it is the diffusion of a "mugshot" or the diffusion of a simple passport-size photo of the arrested person, the "particular potential detrimental to the dignity of the person connected to the typical emphasis of the instrument must be taken into account visual, and the greater suitability of it for a de-contextualized dissemination and not subject to control by the person portrayed "(Cass. Civ., section III, 6 June 2014 n. 12834; Cass. civ., section III, 13 May 2020 no. 8878).

Regarding the disclosure of images of people subjected to judicial proceedings, the Guarantor has intervened several times against newspapers and websites, affirming the prohibition to disseminate the images of the same, even in the context of press conferences, if there are no purposes of justice and police or reasons of public interest (among others, Provision no.76 of 25 February 2021 in www.gpdp.it - web doc. no.9568040, no.38 of 7 February 2019 in www.gpdp.it - web doc. n.9101651 November 26, 2003 at www.gpdp.it - web doc. n.1053631, Provv. March 19, 2003 at www.gpdp.it - web doc. n. 1053451).

In light of the absorbing criteria defined by the Supreme Court regarding the potential damaging to the image and dignity of persons subjected to coercive powers, it becomes irrelevant to dwell further on the circumstance whether or not it is "images of people in detention", noting instead the fact that the treatment in question is not supported by police needs. This is because the treatment in question was carried out by the Ministry in the context of the exercise of police tasks, as recognized by the Ministry itself, and is therefore not regulated by articles 136 et seq. Of the Code and the related Code of ethics, which Article 8 contains an ad hoc discipline for the dissemination of images of people in detention in the context of journalistic activities, but also by Legislative Decree 51/2018, as well as by Presidential Decree no. 15/2018 cited.

Considering this, for the purposes of assessing the lawfulness of the processing in question, the fact that "the press

conference indicated in the complaint was held with the consent of the judicial authority" (see note of the Police Headquarters of 24 February 2021 cit. . and written defense of April 1, 2021 cit.), this assent being able to be noted for the sole purpose of excluding that the disclosure of the information provided at the press conference by the Police Headquarters concerned could take place in violation of the law or negatively affect the criminal proceedings in progress (see articles 114 and 329 of the criminal code). This consent did not, however, exempt the Ministry from an accurate assessment of the compliance of the processing in question with the principles on the protection of personal data.

In the case in question, therefore, the treatment in question must be examined in the light of Legislative Decree no. 51/2018, for which the processing of personal data by the police authorities is "lawful if it is necessary" for the performance of a task of a competent authority for police and justice purposes (articles 1, paragraph 2, 3, paragraph 1, letter a) and 5 of the legislative decree n. 51/2018) and of the DPR n. 15/2018, which with specific regard to the disclosure of images states, in paragraph 2, that the same is allowed when it is justified "by the need for justice or police; it is in any case carried out in such a way as not to prejudice the dignity of the person ".

These principles of the need for justice and police and the protection of the dignity of the person, referred to to protect the image also by Articles 10 of the Italian Civil Code and 97 l. 633/1941, are expressly referred to by the same Ministry in circular 123 / A183.B320 of 26.2.1999, which underlines the need that, even in the hypothesis of indisputable "need for justice and police" for the dissemination of images, a circumstance that does not occur in the case under examination, "the right to privacy and the protection of personal dignity must always be taken into the utmost consideration". Also in the subsequent circular 555 / EST / S / 1/1668/14 of 23 July 2014 concerning the information and institutional communication activities of the State Police, it is pointed out that "the dissemination of mugshots can instead be authorized only when the only available, and there is a need to disclose them, as in the hypothesis of escapes or dangerous fugitives ". In the case in question, as we have seen, the omission of the superimposed numbers does not detract from the characteristics of the images in question.

3. Conclusions.

In light of the aforementioned assessments, taking into account the statements made by the data controller during the investigation □ and considering that, unless the fact constitutes a more serious crime, anyone, in a proceeding before the Guarantor, falsely declares or certifies information o circumstances o produces false deeds or documents is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the execution of the tasks or exercise of the powers

of the Guarantor" □ the elements provided by the data controller in the defense briefs do not allow to overcome the findings notified by the Office with to start the procedure.

Given, in fact, that the owner is responsible for compliance with the principles set out in art. 3, paragraph 1, legislative decree n. 51/2018 (Article 3, paragraph 4) and must be "able to prove it" (Article 4, paragraph 4, EU Directive 2016/680), it is reiterated that during the investigation carried out no actual need to disclose the images in question - in addition to the various information supplied with them, including the personal details of the interested party - resulting in the processing itself not only unnecessary, but also excessive with respect to police purposes (Article 3, paragraph 2, letter c) of Legislative Decree no. 51/2018).

In this case, it must be borne in mind that the same interested party was already in detention and that the purpose indicated by the Ministry appears, due to its generic nature, unsuitable for justifying the dissemination of images of this nature, without any consideration for the aforementioned needs. protection of dignity, privacy and protection of personal data, clearly supervised by the ECHR and the Supreme Court of Cassation.

In other words, the images in question were disseminated by the Ministry in violation of the regulations on the protection of personal data and in a way that is detrimental to the dignity of the person concerned, also in consideration of the state of subjection of the person concerned.

For these reasons, the processing of personal data carried out by the Ministry of the Interior through the disclosure in question is illegal, in violation of Articles 3, paragraph 1, lett. a) and c) and 5 of the legislative decree n. 51/2018 and 14 of the Presidential Decree n. 15/2018.

Violation of the provision referred to in Article 3, paragraph 1, letter a) is punished, pursuant to Article 42, paragraph 1, of Legislative Decree no. 51/2018, with the administrative sanction of the payment of a sum from 50,000 euros to 150,000 euros.

The same article establishes in the third paragraph that in determining the administrative sanction to be applied, the criteria referred to in Article 83, paragraph 2, letters a), b), c), d), e), f), g), h), i), k), of the Regulation. On the basis of these criteria, the particular nature of the data in question must be taken into account (images referring to a person in detention, in relation to a criminal proceeding involving him), the territorial scope of reference and the circumstance that, in the course of proceedings before the Guarantor and in the defense briefs, the holder has erroneously represented that "in the article by Nicola Cendon published in" XX "on 31.01.2020, there is no photo of the arrested person, of which, moreover, no the name is not even

indicated, but only the initials XX ", while there is proof of the contrary.

Due to the aforementioned elements, assessed as a whole, it is considered to determine the amount of the financial penalty for the violation of Article 3, paragraph 1, lett. a) of Legislative Decree no. 51/2018 in Euro 50,000 (fifty thousand), as an effective, proportionate and dissuasive measure (Article 83, paragraph 1, Regulation).

WHEREAS, THE GUARANTOR

declares the unlawfulness of the data processing of the interested party, carried out by the Ministry, for the violation of articles 3, paragraph 1, lett. a) and c) and 5 of the legislative decree n. 51/2018 and 14 of the Presidential Decree n. 15/2018, in the terms set out in the motivation and, consequently,

ORDER

to the Ministry of the Interior, the data controller, to pay the sum of € 50,000.00 (fifty thousand) as a fine for the violation of Article 3, paragraph 1, lett. a) of Legislative Decree no. 51/2018, representing that the offender, pursuant to article 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within thirty days, an amount equal to half of the sanction imposed;

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the aforementioned owner, in the event of failure to settle the dispute pursuant to the aforementioned article 166, paragraph 8, of the Code, to pay the sum of € 50,000.00 (fifty thousand), 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 article 27 of law no. 689/1981;

HAS

pursuant to Article 166, paragraph 7, of the Code, the full publication of this provision on the website of the Guarantor and believes that the conditions referred to in Article 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 articles 39, paragraph 3 of the legislative decree n. 51/2018 and 10 of the d. lgs. 1 September 2011, n. 150, an opposition may be proposed against this provision, alternatively, to the court of the place where the data controller resides or has its headquarters, or to the court of the place of residence of the interested party, within thirty days from the date of communication of the provision itself.

Rome, February 24, 2022

PRESIDENT

Stanzione

THE RAPPOREUR

Cerrina Feroni

THE DEPUTY SECRETARY GENERAL

Philippi