

[doc. web n. 9583865]

Injunction order against the "Giordano Bruno" National Boarding School - March 25, 2021

Record of measures

n. 105 of 25 March 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 the cons. Fabio Mattei, general secretary;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / CE, "General Data Protection Regulation" (hereinafter, "Regulation");

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

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

Having seen the documentation in the deeds;

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

Speaker Dr. Agostino Ghiglia;

## WHEREAS

### 1. Introduction.

With a complaint of 25 June 2019, submitted pursuant to art. 77 of the Regulation, it was complained that the National Boarding School "Giordano Bruno" of Maddaloni (CE) (hereinafter, the "Boarding School") would have published, in the

"Transparent Administration" section of its institutional website, a document called " Final hypothesis of supplementary contract A.S. 2017/18 ", containing personal data relating to the complainant, stating, with reference to the latter, that" the distribution of the fund could not be completed, lacking the report of the [role of the complainant] (which had not been charged with drafting it and therefore the DS proceeded together with Ms [...], despite the presence of the [role of the complainant] regularly in service, to draft the report [...] ".

The publication of the document in question was ascertained by the Office on 2 December 2019 (see service report prot. No. 115/19 of 3 December 2019).

## 2. The preliminary activity.

With a note dated 4 December 2019 (prot. No. 42049), the Office, on the basis of the elements acquired, the checks carried out and the facts that emerged as a result of the investigation, notified the Board, 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 articles 5, par. 1, lett. a) and c), 6, par. 1, lett. c) and e), 2 and 3, lett. b), as well as 2-ter, paragraphs 1 and 3, of the Code, 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 art. 18, paragraph 1, of the l. November 24, 1981, n. 689).

With a note dated 9 December 2019 (prot. No. 0010750 / U), the Boarding School, in the person of the Rector - Headmaster, stated, in particular, that "having acknowledged the seriousness of the alleged violation - promptly ordered on 5 December 2019 the removal of the document "Definitive hypothesis of supplementary contract a. s. 2017/2018 "published in the Section" Transparent Administration "[of the] Convitto", and that "on 9 December, he compiled - in agreement with the person responsible for the processing of personal data [of the] Convitto, the register of violations, so as required by art. 33 and 34 of Regulation 679/2016 ".

In a note dated 2 January 2020, signed by the contact person for the personal data protection officer designated by the Boarding School and sent to this Authority and, in copy, to the Boarding School, it was also declared, in particular, that: "The violation consisted in reporting in the document" Final hypothesis of supplementary contract of the school for the school year 2017/18 "(prot. N. 9344 / II.10 of 30/11/2017, published on 18 / 07/2018) of references to a hypothetical failure to fulfill obligations by the [role of the complainant] ";

"This document was published in" Transparent Administration "and remained online until 05/12/2019; following the report received by the Guarantor's office, on 04/12/2019, given that previously there was no report either to the Data Controller [...] or to the Data Protection Officer of the same [...]";

"The measures taken to mitigate the effects of the violation, immediately after it became known, were to immediately remove the source of the violation, deleting the document from the" Transparent Administration "section of the institutional school website, and inform the interested party that he has suffered the violation ".

### 3. Outcome of the preliminary investigation.

The personal data protection discipline provides that public subjects, even if they operate in the performance of their duties as employers, may process the personal data (Article 4, No. 1 of the Regulation) of employees, if the processing is necessary, in particular, "to fulfill a legal obligation to which the data controller is subject" (or the specific obligations or tasks provided for by law for the purpose of managing the employment relationship) or "for the performance of a task of interest public or connected to the exercise of public authority vested in the data controller "(art. 6, par. 1, lett. c) and e) of the Regulation).

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 (art . 2-ter, paragraphs 1 and 3, of the Code).

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).

Having said this, it is noted that, in its defense briefs, the Boarding School did not indicate any legal basis (see Article 5, par. 1, letter a) and 6 of the Regulation) that could have justified the online dissemination of personal data of the complainant, relating to the circumstance, indeed disputed, the latter, that - as stated in the published document - the complainant would not have

fulfilled his official duties, despite being present on duty. In this regard, the Boarding School limited itself to "acknowledging the gravity of the alleged violation", also spontaneously classifying the incident as a violation of personal data, which the Boarding School took steps to document pursuant to art. 33, par. 5, of the Regulation.

#### 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 25/5/2018 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 document subject to the complaint remained published on the Convitto's website until 5 December 2019.

Therefore, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing of personal data carried out by the "Giordano Bruno" National Boarding School is noted, for having disclosed the complainant's personal data in the absence of suitable regulatory conditions, in violation of Articles . 6, of the Regulation, and 2-ter, paragraphs 1 and 3, of the Code, as well as the principle of "lawfulness, correctness and transparency" pursuant to art. 5, par. 1, lett. a) of the Regulations (having, on the other hand, on the basis of what emerges from the documents, consider the violation of Article 5, paragraph 1, letter c) of the Regulations to be non-existent).

The violation of the aforementioned provisions makes the administrative sanction provided for by art. 83, par. 5, of the Regulation, pursuant to art. 58, par. 2, lett. i), and 83, par. 3, of the same Regulation and art. 166, paragraph 2, of the Code. In this context, considering, in any case, that the conduct has exhausted its effects, given that the publication of the administrative documents in question on the Convitto website has ceased, the conditions for the adoption of further corrective

measures are not met. 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. 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 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, it was considered that the detected conduct, held in violation of the regulations on the protection of personal data, 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 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 12/6/2014 and in [www.gpdp.it](http://www.gpdp.it), doc. web n. 3134436.

Account was also taken of the considerable period of time in which the complainant's personal data were disseminated (from 18/07/2018 to 05/12/2019).

On the other hand, it was favorably acknowledged that there are no previous relevant violations committed by the data controller or previous measures pursuant to art. 58 of the Regulation, and that the owner promptly took action to remove the document subject to publication as soon as he became aware of the violation.

On the basis of the aforementioned elements, evaluated as a whole, it is believed to determine the amount of the financial penalty in the amount of € 1,000 (one thousand) for the violation of Articles 5, par. 1, lett. a), and 6, par. 1, lett. c) and e) and 2

and 3, lett. b) of the Regulations, as well as 2-ter, paragraphs 1 and 3 of the Code, 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 "Giordano Bruno" National Boarding School for violation of Articles 5, par. 1, lett. a), and 6 of the Regulations, as well as 2-ter, paragraphs 1 and 3 of the Code, within the terms set out in the motivation;

ORDER

at the National State Boarding School "Giordano Bruno", in the person of the pro-tempore legal representative, with registered office in Via San Francesco D'Assisi 119 - 81024 Maddaloni (CE), Tax Code 80004990612, pursuant to art. 58, par. 2, lett. i), and 83, par. 5, of the Regulations, 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 boarding school, 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, March 25, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei