

Injunction order against the Municipality of Reggio Emilia - 1 December 2022

Register of measures

no. 405 of 1 December 2022

## THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, prof.ssa Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer. Guido Scorza, components and the cons. Fabio Mattei, general secretary;

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

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national legal 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 movement of such data and which repeals Directive 95/46/EC (hereinafter the "Code");

CONSIDERING the law n. 689/1981 and subsequent amendments and additions, with particular reference to art. 1, paragraph 2;

HAVING REGARD TO the complaint presented on the XX date, through her lawyer, by Ms XX, in which she complained of the circumstance that the Municipality of Reggio Emilia (hereinafter the "Municipality") - where she worked employment - following termination of the employment contract "due to absolute and permanent incapacity to perform the tasks of one's professional profile", published the R.U.A.D. no. XX in which "the diagnostic judgment" of the complainant was reported with clear indication of the relative personal data (name and date of birth);

CONSIDERING that the determination was also visible online until the twentieth, the date on which, following a warning from the interested party, the Municipality proceeded to remove it from its institutional site and from the web;

HAVING ACKNOWLEDGED the note of the XX, sent on the XX, (prot. n. XX), with which the Municipality provided a response to the request for information from the Department of Public Affairs of this Authority of the XX (note prot. n. XX), declaring, in particular, that:

- "on the XX date, the Manager of the Management and Development Service of Personnel and of the Organization of the Municipality of Reggio Emilia drafted and digitally signed (through the JEnte-Atti procedure with R.U.A.D. number XX) the managerial Provision concerning "Resolution of the Employment relationship due to absolute and permanent incapacity for the duties of the employee's professional profile V.P. and consequent measures";
- "this provision was published on the online Praetorian Register of the Municipality of Reggio Emilia from XX to XX and, subsequently, in the Transparent Administration Section of the institution's institutional website until the XX date on which the determination was obscured following a request of removal by the interested party of the XX";
- "in relation to the obligations of publication on the praetorian register, reference is made to sentence no. 1370 of 03/15/2006, with which the Council of State established that "publication on the praetorian register of the Municipality is prescribed by art. 124 TU no. 267/2000 for all the resolutions of the Municipality and the Province and it concerns not only the resolutions of the governing bodies (Council and Municipal Council) but also managerial decisions";
- "as regards the publication obligations in the Transparent Administration Section of the Entity's institutional website, reference is made to the provisions of article 23 of Legislative Decree no. 33/2013";
- "the R.U.A.D. XX was drawn up with the employee's data unencrypted for the purpose of transmitting the complete deed to INPS for the follow-up pertaining to the social security institution";
- "on XX the INADEL form 350P was sent via PEC to the INPS for the payment of the end-of-service treatment of Ms XX with the attached R.U.A.D. XX";
- "therefore the purposes of compliance with the regulatory provisions concerning publications on the praetorian register and transparent administration of administrative measures were correctly pursued by this Administration, however erroneously leaving the personal data of the interested party unclear";
- "the managerial determination in question remained visible on the institutional website of the Municipality, and therefore subsequently indexed by generalist search engines, from the date of publication on the praetorian register, XX, to the date on which the determination was obscured, XX, following of request for removal by the interested party which took place on the XX".

GIVEN the note prot. no. XX of the XX of the Public Realities Department, with which the preliminary procedure was defined, the reasons for which must be understood as fully referred to here, in which it is ascertained that, as a result of the publication

of the R.U.A.D. XX on the institutional site of the Municipality, and subsequently indexed on search engines, the personal data of the complainant were disseminated, also relating to the state of health, until the XX, date on which, following a notice from the interested party, the Municipality has taken steps to remove it from its institutional site and from the web;

CONSIDERING that the Department has found that, based on data protection regulations, public administrations, even when they operate as employers, can process personal data only in the presence of a suitable lawfulness prerequisite (see, with regard to the provisions applicable to the specific case in terms of time, articles 11, paragraph 1, letter a), and 19, as well as, with reference to sensitive and judicial data, articles 20, 21 and 22, of the Code, in the text prior to the amendments made by Legislative Decree 101/2018). Even in the presence of an obligation to publish, the subjects called to implement it cannot disseminate excess or irrelevant personal data, since reference to the regulations concerning the publicity of local authority documents on the praetorian register cannot be considered sufficient, as also all the limits established by the principle of data minimization apply to publications in the online praetorian register (art. 124 of Legislative Decree 267/2000) (see, in this regard, the recognition of the applicable regulatory framework, contained in the "Guidelines guide on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of publicity and transparency on the web by public subjects and other obliged entities" no. 243 of 15 May 2014, web doc. no. 3134436, second part, paragraphs 1 and 3.a);

CONSIDERING that the publication of the managerial determination object of the complaint appears to have taken place, as confirmed by the data controller, from the XX to the XX, therefore, on a date prior to that on which Regulation (EU) 2016/679 became applicable (May 25, 2018 ) and that, therefore, the provisions contained in the Code regarding the protection of personal data (legislative decree 30 June 1003, n. 196) in the version prior to the reformulation of the same carried out in by means of Legislative Decree no. 101/2018;

CONSIDERING the act of the XX (prot. n. XX) with which the Public Realities Department of the Guarantor contested the Municipality of Reggio Emilia, in the person of its pro-tempore legal representative, with registered office in Piazza Prampolini, 1 - 42121 Reggio nell 'Emilia (RE), Fiscal Code 00145920351, the violation of the provisions referred to in articles 19, 20 and 22 paragraph 8 of the Code, sanctioned by article 162, paragraph 2-bis of the same Code, for having disseminated personal data of the complainant, also relating to health;

NOTING that from the administrative report prepared by the Office, pursuant to art. 17 of the law of 24 November 1981 n. 689,

the reduced payment pursuant to art. 16 of law 689/81;

NOTING that the Municipality of Reggio Emilia, with a note of the XX, presented a defense brief stating, in particular, that "the dispute [to the Municipality] was made more than five years after full knowledge by the Guarantor of the events and elements necessary for assess the existence of the violation and therefore beyond the terms established by both art. 14 and by art. 28 of Law 689/1981" [considering that] "the complainant [had already] filed the same complaint through his/her trusted lawyer with Pec dated XX addressed to the Guarantor for the protection of personal data, as well as to the Municipality of Reggio Emilia";

CONSIDERING that what was represented in the aforesaid defense brief did not make it possible to overcome the findings notified by the Office because:

- the note of the XX referred to, was addressed by the interested party to the Municipality, in order to exercise their rights, such as that of cancellation of their personal data published on the institutional website, pursuant to articles 7 and 8 of the Code in the text prior to the amendments of Legislative Decree 101 of 08/10/2018;
- against the exercise of the rights by the interested party - articles 7 and 8 of the Code in the text prior to the amendments of Legislative Decree 101 of 08/10/2018 - however, a formal appeal to the Guarantor was not followed, to the pursuant to article 142 of the Code;
- following the entry into force of EU Regulation 679/2016 and the provisions for the adaptation of national legislation, the law expressly provided that reports and complaints, already presented to the Guarantor, would become inadmissible if a letter was not sent to the Authority express request for treatment within 60 days starting from the date of publication in the Official Gazette of the notice referred to in paragraph 3 of article 19 of Legislative Decree 101 of 2018 (see article 19 paragraphs 1, 3 and 4 of Legislative Decree .lgs.101 of 2018);
- in this regard, the Guarantor, with resolution no. 455 of 27 September 2018 (web doc. n. 9047256), has in fact provided indications relating to the requests to be considered included in the context of previous affairs referred to in art. 19 of the aforementioned decree and published in the Official Gazette General Series n.231 of 10/04/2018, the notice, pursuant to art. 19 paragraph 3, relating to complaints, reports and requests for preliminary verification (this notice is also available on the Guarantor institutional website, web doc 9047249);
- since the interested party did not express his "current interest" in the processing of the report within the aforesaid term, the same was consequently filed within the aforesaid terms of the law;

- only following a subsequent and independent complaint, presented pursuant to Article 77 of the Regulation on the XX date, did the Office initiate a separate investigation requesting clarifications from the Municipality to acquire the necessary elements in order to reconstruct the complained matter and verify if the treatment was still in progress;

NOTING that, on the basis of the reasons referred to in the administrative dispute of the XX, which are understood here as fully referred to and confirmed, the Municipality of Reggio Emilia, in the person of the legal representative pro-tempore, as data controller, appears to have committed the violation of the provisions of articles 19, 20 and 22 paragraph 8 of the Code, sanctioned by art. 162, paragraph 2-bis, of the same Code, for having disclosed the complainant's personal data, also relating to health, in the absence of a suitable regulatory prerequisite and in violation of the prohibition of disclosure of data relating to health, as specified above;

CONSIDERING the art. 162, paragraph 2-bis of the Code, which punishes the violations indicated in art. 167, including violations relating to articles 19, 20 and 22 paragraph 8 of the same Code, with the administrative sanction of the payment of a sum from Euro 10,000.00 (ten thousand) to Euro 120,000.00 (one hundred and twenty thousand);

CONSIDERING that, for the present case, the reduction provided for by art. 164-bis, paragraph 1, of the Code, since the documentation in the documents shows that the Municipality, the data controller, declared that due to a mistake, the data of the complainant were left "erroneously in the clear" in the resolution that it was deemed necessary publish on the basis of the law, a circumstance which, even if it has been duly taken into consideration, is not in any case sufficient to justify, in terms of data protection, the conduct adopted;

CONSIDERING, therefore, that the sanction provided for by the aforementioned art. 162, paragraph 2-bis, of the Code, restated pursuant to the aforementioned art. 164-bis, paragraph 1, of the same Code, varies from a minimum of Euro 4,000.00 to a maximum of Euro 48,000.00;

CONSIDERING that with the aforementioned administrative dispute of the XX, sent on the XX date, the Guarantor informed the Municipality of Reggio Emilia of the possibility of availing itself of the right to make the payment, within the peremptory term of 60 days from the date of notification of the dispute, of the sum set at 8,000.00 (eight thousand) euros;

CONSIDERING that the Municipality of Reggio Emilia has not made use of this option;

CONSIDERING that, for the purpose of determining the amount of the pecuniary sanction, it is necessary to take into account, pursuant to art. 11 of the law of 24 November 1981 n. 689, of the work carried out by the agent to eliminate or mitigate the

consequences of the violation, the seriousness of the violation, the personality and economic conditions of the offender and that therefore the amount of the pecuniary sanction must be quantified in the amount of 8,000.00 euros (eight thousand);

HAVING REGARD to the documentation in the deeds;

HAVING REGARD TO the observations made by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000, adopted with resolution of 28 June 2000;

SPEAKER Prof. Geneva Cerrina Feroni;

ORDER

to the Municipality of Reggio Emilia, in the person of its pro-tempore legal representative, with registered office in Piazza Prampolini, 1 - 42121 Reggio Emilia (Re), Tax Code 001459203515, to pay the sum of 8,000.00 (eight thousand) euros, as a pecuniary administrative sanction for the violation of the provisions of art. 19, 20 and 22 paragraph 8 of the same Code for having disseminated personal data of the complainant, also relating to health, without a suitable legal basis;

ENJOYS

to the same Municipality to pay the sum of 8,000.00 (eight thousand) euros according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law of 24 November 1981, n. 689.

Pursuant to articles 152 of the Code and 10 of Legislative Decree no. 150/2011, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal lodged with the ordinary court of the place where the data controller has his residence, within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 1st December 2022

PRESIDENT

Station

THE SPEAKER

Cerrina Feroni

THE SECRETARY GENERAL

Matthew