

[doc. web no. 9572226]

Injunction against Liceo Pepe Calamo - 11 February 2021

Register of measures

no. 51 of 11 February 2021

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, Secretary General;

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

CONSIDERING the d. lgs. 30 June 2003, no. 196 containing the "Code regarding the protection of personal data (hereinafter the "Code");

CONSIDERING the Regulation n. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved with resolution no. 98 of 4/4/2019, published in the Official Gazette no. 106 of 8/5/2019 and in www.gdpd.it, doc. web no. 9107633 (hereinafter "Regulation of the Guarantor n. 1/2019");

HAVING REGARD to the documentation in the deeds;

GIVEN the observations made by the Secretary General pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the office of the Guarantor for the protection of personal data, in www.gdpd.it, doc. web no. 1098801;

Supervisor Prof. Geneva Cerrina Feroni;

WHEREAS

1. The complaint

This Authority has received a complaint regarding the dissemination on the institutional website of the Liceo Scientifico Pepe Calamo of Ostuni of rankings relating to level III teaching staff, containing personal data of the complainant.

2. The preliminary investigation.

From the preliminary investigation carried out by the Office on 22 October 2019, it emerged that the aforementioned ranking, relating to level III teaching staff, was visible and freely downloadable from the institutional website of the aforementioned Institute, at the url: [https://. ..](https://...)

As part of the assessment carried out, the Office also found that in these rankings, provided for by art. 5, paragraph 9, Decree of the Minister of Education June 13, 2007, n. 131 (Regulation for the assignment of substitute teaching and educational staff pursuant to article 4 of the law of 3 May 1999, n. 124) and by art. 32, the. 18 June 2009, no. 69, in addition to the personal data indicated by the complainant, further information of a personal nature was contained relating to about 2000 teachers, not necessary with respect to the purposes underlying the publication, including telephone numbers, residential addresses, e-mail addresses , the preference codes as well as the data relating to the health of some interested parties.

The Office has in fact found that, in the fields called "Prefer. 1" "Favorite 2" "Favorite 3" "Favorite 4" some alphabetic abbreviations were indicated, including the letter "S". This letter, according to what is reported in Annex 6 (preference codes) of the Decree of the Ministry of Education, University and Research of 1 April 2014, n. 235 (Update of the rankings once the teaching and educational staff are exhausted, valid for the three-year school years 2014/15, 2015/16 and 2016/17), as well as in the application models relating to inclusion in the club and school rankings for the same three-year school year, attached to the D.M. 22 May 2014, no. 353 (see also art. 5, paragraph 4 of Presidential Decree 9 May 1994 n. 487), identifies the category of "invalid and maimed civilians". The interested parties for whom the presence of the abbreviation "S" was identified were around 25.

In this regard, the Pepe Calamo high school responded to the request for information from this Department of 29 October 2019 (prot. n. 37090/19) with note prot. 3717/A.13.a of 23 November 2019.

In particular, the head teacher of the high school, with a declaration of the truthfulness of which he is criminally liable pursuant to art. 168 of the Code, represented that:

- "the Administration erroneously and involuntarily disseminated on the internet the file relating to the Institute's provisional rankings of Level III teaching staff, also containing personal information of the complaining teacher. We have ascertained that instead of the file to be published, purposely deducted from all personal data not necessary for the purpose, the original file has unfortunately been inserted";

- all the necessary security measures have been implemented in order to prevent the further dissemination and disclosure of

the aforementioned data. Same; in fact, they were promptly removed from the School's institutional website. Then following the communication of the Dpo in charge at the time on 10/21/2019 of the presence of data still accessible on the web, the Administration also requested a deep removal from the server of the files that had already been immediately removed from the register of the site, by the programmers of the Spaggiari Group - Parma, with a simultaneous request to google to remove the link ".

3. Applicable law.

Pursuant to the European Regulation, which became applicable from 25 May 2018, the processing of personal data carried out by public entities, even when they operate in the context of insolvency and personnel selection procedures, is lawful, only if such processing is necessary "to fulfill a legal obligation to which the data controller is subject" or "for the execution of a task of public interest or connected to the exercise of public powers vested in the data controller" (Article 6, paragraph 1, letter c) and e)).

European legislation also provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of this regulation with regard to treatment, in accordance with paragraph 1, letters c) and e), by determining more precisely requirements specific for the treatment and other measures aimed at guaranteeing a lawful and correct treatment (...)" with the consequence that, in the present case, the provision contained in the art. 2-ter of the Code, according to which the operation of dissemination of personal data (such as publication on the Internet), in the public sphere is permitted only when required by law or, in the cases provided for by law, by regulation.

In this context, the processing of personal data must take place in compliance with the principles indicated in the art. 5 of the Regulation, including those of "lawfulness, correctness and transparency" as well as "data minimization", according to which personal data must be - respectively - "processed in a lawful, correct and transparent manner in relation to the interested party" as well as "adequate, pertinent and limited to what is necessary with respect to the purposes for which they are processed" (par. 1, letters a) and c)).

In any case, the dissemination of data relating to health is absolutely prohibited (Article 9, paragraphs 1, 2 and 4, of the Regulation, Article 2-septies, paragraph 8, of the Code, i.e. "personal data relating to health physical or mental health of a natural person, including the provision of health care services, which reveal information relating to his state of health" (Article 4, paragraph 1, no. 15; recital no. 35 of the Regulation).

With particular reference to the publication of the rankings, moreover, the Guarantor in provision no. 134 of 15 May 2014, containing the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for purposes of publicity and transparency on the web by public subjects and other obliged bodies" (in www.gpdp.it, web doc. No. 3134436, being updated) clarified that "only relevant and not excessive data relating to data subjects must be disclosed" and that "Data concerning the contact details of data subjects cannot therefore be published (think of landline or mobile phone numbers, residential or e-mail addresses, the tax code, the ISEE indicator, the number of disabled children, the results of psycho-aptitude tests or educational qualifications)". In a similar manner, the Guarantor had expressed himself in provision no. 23 of 14 June 2007, containing "Guidelines on the processing of personal data of workers for the purpose of managing the employment relationship in the public sector" (in www.gpdp.it, web doc. n. 1417809) highlighting that: " It is not lawful to include other types of irrelevant information in the ranking documents to be published, such as, for example, landline or mobile phone numbers or the tax code."

4. Preliminary assessments of the Office on the processing of personal data carried out.

From the assessment carried out on the basis of the elements acquired and the facts that emerged following the preliminary investigation, as well as the subsequent evaluations, the Office ascertained that the school, by publishing the aforementioned rankings on the institutional website (including, among other, tax code, residential address, landline and mobile telephone number, e-mail address, preference codes, data relating to the health of the interested parties), has led to the disclosure of personal data relating to the subjects listed in the aforementioned rankings, in absence of a suitable regulatory prerequisite, pursuant to art. 2-ter, paragraphs 1 and 3 of the Code, with reference to art. 6 par. 1, lit. c) and e), of the Regulation, which instead allows the aforementioned possibility, by public subjects, only when the diffusion is foreseen by a law or, in the cases foreseen by the law, a regulation, as well as the diffusion of data relating to the health of certain interested parties in violation of art. 9, par. 1, 2 and 4, of the Regulation, as well as of the art. 2-septies, paragraph 8, of the Code.

Furthermore, the disclosure of the personal data described above took place in a manner that does not comply with the principles of "lawfulness" and "minimization" of the processing, in violation of art. 5, par. 1, lit. a) and c), of the European Regulation.

Thus we proceeded with the notification of the violations carried out, pursuant to art. 166, paragraph 5, of the Code, to the school, communicating the start of the procedure for the adoption of the measures referred to in article 58, paragraph 2, of the

Regulation and inviting the aforementioned high school to send the Guarantor defensive writings or documents and, possibly, to ask to be heard by the Authority, within 30 days (article 166, paragraphs 6 and 7, of the Code; as well as article 18, paragraph 1, of law no. 689 of 11/24/ 1981).

5. Outcome of the investigation relating to the complaint presented.

With note prot. no. 0001797/2020 of 02 July 2020, the High School sent its defense writings to the Guarantor in relation to the notified violations.

Specifically, it was highlighted, among other things, that:

- "the Administration erroneously and involuntarily disseminated on the internet the file relating to the Institute's provisional rankings of level III teaching staff, also containing personal information of the complaining teacher. We have ascertained that the original file has unfortunately been inserted instead of the file to be published, purposely deducted from all personal data not necessary for the purpose".
- "as soon as" having "awareness of the violation via pec of the interested party on 09/16/2019 in which reference is made to an untraceable telephone call on 08/30/2019, in which the same would have complained about the presence on the Internet of the problem in question", "all the necessary security measures have been put in place in order to prevent the further dissemination and dissemination of the aforementioned data".
- "with reference to the nature of the violation, the involuntary nature of the same post was ascertained that the error was not of a procedural type but a mere exchange of files, probably not sufficiently distinct in the naming phase".
- "The Administration also requested a deep removal from the server of the files that had already been immediately removed from the site register, by the programmers of the Spaggiari Group - Parma, with a simultaneous request to google to remove the link. To date, personal data, also relating to the health of the teaching staff included in the aforementioned rankings, are no longer present on the institutional website and/or can be found through common search engines."

These elements, although worthy of consideration, do not however allow us to overcome the findings notified by the Office with the note prot. no. 20021/20 of 3 June 2020 and are not sufficient to allow the filing of this proceeding, since none of the cases provided for by art. 11 of the Regulation of the Guarantor n. 1/2019.

In this context, the preliminary assessments of the Office are confirmed and the illegality of the processing of personal data carried out by the Pepe Calamo scientific high school is noted for having disseminated, through the complete publication of the

rankings at the url: <https://...> , unnecessary personal data (tax code, address, landline and mobile telephone number, e-mail address, preference codes) with respect to the purposes pursued with the publication of the ranking, concerning the complainant and another 2,000 teachers included in the aforementioned rankings (cf. ., with regard to the publication of irrelevant data contained in school rankings, the provisions of 6 June 2013, nos. 274, 275 and 276, web doc. no. 2535862, 2536184, 2536409)

It is also ascertained that the same rankings contained data relating to the health of about 25 teachers.

The indication of the letter "S" next to the names of the interested parties, in fact, provides information relating to the state of health of the same, even through the consultation of annex 6 to the MIUR decree of 1 April 2014, n. 235, in violation of the general ban on the dissemination of health data (art. 2-septies of the Code; art. 9 of the Regulation; see, in particular, the consolidated orientation of the Guarantor, even with regard to the previous regulatory framework, Provision 35 dated February 4, 2016, web doc. no. 4727305 and 4912481; Provision no. 244 of 1 June 2016, web doc. no. 5260571, and the provisions cited therein, as well as, most recently Provision dated 30 January 2020, no. 21, web doc. no. 9283014, Provision 6 February 2020 no. 27 web doc. no. 9283029, Provision 12 March 2020 no. 50 web doc. no. 9365159).

This publication took place in violation of the legislation on the protection of personal data and, specifically:

- a) in violation of the principles of "lawfulness, correctness and transparency" and "minimization of data", pursuant to art. 5, par. 1, lit. a) and c) of the Regulation;
- b) in the absence of a regulatory prerequisite for the publication of certain personal data such as tax code, address, landline and mobile telephone number, e-mail address, preference codes, data relating to the health of certain interested parties pursuant to art. 2-ter, paragraphs 1 and 3, of the Code, with reference to art. 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the Regulation;
- c) in violation of the ban on the dissemination of data relating to health (art. 9, par. 1, 2, 4, of the Regulation and art. 2-septies, paragraph 8, of the Code).

In this context, considering, in any case, that the conduct has exhausted its effects, given that the data controller has taken steps to remove the document from the school website, a circumstance verified by the Office, the conditions for the adoption are not met of measures, of a prescriptive or inhibitory type, pursuant to art. 58, par. 2, of the Regulation.

6. Adoption of the injunction order for the application of the pecuniary administrative sanction (articles 58, paragraph 2, letter i;

83 GDPR).

The Liceo Pepe Calamo therefore appears to have violated the articles 5, par. 1, lit. a) and c) and 9, par. 1, 2, 4, of the Regulation; articles 2-ter paragraphs 1 and 3, with reference to art. 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the Regulation and 2-septies, paragraph 8, of the Code.

In this regard, the art. 83, par. 3, of the Regulation, provides that "If, in relation to the same treatment or related treatments, a data controller or a data processor violates, with malice or negligence, various provisions of this regulation, the total amount of the pecuniary administrative sanction will not exceeds the amount specified for the most serious violation".

In this case, the violation of the aforementioned provisions is subject to the same pecuniary administrative sanction provided for by art. 83, par. 5 of the Regulation, which therefore applies to the present case.

It must also be taken into account that, even if the documents which are the subject of the complaint were published before the date of full application of the Regulation, in order to determine the applicable rule, in terms of time, the principle of legality pursuant to art. . 1, paragraph 2, of the law no. 689/1981 which establishes as "The laws that provide for administrative sanctions are applied only in the cases and in the times considered in them". This determines the obligation to take into consideration the provisions in force at the time of the committed violation, which in the case in question - given the permanent nature of the disputed offense - must be identified at the time of cessation of the unlawful conduct, which occurred after the date of the 25 May 2018 in which the Regulation became applicable. Indeed, the preliminary investigation documents revealed that the illicit online dissemination lasted at least until the verification carried out by the Office on 22 October 2019.

The Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation as well as art. 166 of the Code, has the corrective power to "impose a pecuniary administrative 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 every single case". In this context, "the Board [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in full or in part, on the website of the Guarantor pursuant to the article 166, paragraph 7, of the Code" (art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019).

The aforementioned pecuniary administrative sanction imposed, according to the circumstances of each individual case, must be determined in the amount, taking into due account the elements provided for by art. 83, par. 2, of the Regulation.

In this sense, it should be considered that the reported conduct, carried out in violation of the regulations on the protection of

personal data, involved the dissemination of unnecessary personal data with respect to the purposes underlying the publication of the rankings (tax code, address, landline and mobile phone, e-mail address, preference codes), referring to a large number of subjects, (more than 2000) as well as data relating to the health of about 25 subjects, identified in the ranking by annotating, next to the names interested parties, of the letter "S" as a preference title relating to the category of "invalid and maimed civilians", pursuant to MIUR Decree No. 235 of 1 April 2014, Annex 6, relating to "preference codes". This dissemination of data lasted for a considerable amount of time (a few years).

However, it is necessary to take into consideration the culpable nature of the violation as the publication is to be attributed to a mere error caused by an exchange of files as "instead of the file to be published, specifically deducted from all personal data (...) , unfortunately the original file has been inserted" and that the recipient of the provision is a public school. The Institute also took action to remove the personal data of the interested parties as soon as it received the request for information from the Department and therefore collaborated with the Authority during the investigation of the present proceeding in order to remedy the violation and mitigate its possible negative effects. A series of actions aimed at implementing the technical and organizational measures has also been initiated. Furthermore, there are no previous violations of the pertinent Regulations committed by the aforementioned High School.

Based on the aforementioned elements, evaluated as a whole, also taking into account the phase of first application of the sanctioning provisions pursuant to art. 22, paragraph 13, of Legislative Decree lgs. 10/08/2018, no. 101, it is deemed necessary to determine pursuant to art. 83, par. 2, of the Regulation, the amount of the pecuniary sanction, provided for by art. 83, par. 5, letter. a) of the Regulations, in the amount of 5,000.00 (five thousand) euros for the violation of articles 5, par. 1, lit. a) and c); 9, par. 1, 2, 4, of the Regulation, articles 2-ter paragraphs 1 and 3, with reference to art. 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b) of the Regulation and 2-septies, paragraph 8, of the Code, as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same Regulation.

In relation to the specific circumstances of the present case, it is believed that the ancillary sanction of publication on the website of the Guarantor of this provision should be applied, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Regulation of the Guarantor n. 1/2019.

Finally, it is believed that the conditions set forth in art. 17 of the Regulation of the Guarantor n. 1/2019.

ALL THIS CONSIDERING THE GUARANTOR

having detected the unlawfulness of the processing carried out by Liceo Pepe Calamo in the terms indicated in the justification pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, as well as 166 of the Code

ORDER

At Liceo Pepe Calamo, in the person of the pro-tempore legal representative, with registered office in via T. Nobile - 72017 Ostuni (Br) – C.F. 90053660743 to pay the sum of 5,000.00 (five thousand) euros as an administrative fine for the violations referred to in the justification;

ENJOYS

to the same high school to pay the sum of 5,000.00 (five thousand) euros, according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law no. 689/1981.

It should be remembered that the offender retains the right to settle the dispute by paying - always according to the methods indicated in the annex - an amount equal to half of the fine imposed, within the term set out in art. 10, paragraph 3, of Legislative Decree lgs. no. 150 of 09/01/2011 envisaged for the lodging of the appeal as indicated below (art. 166, paragraph 8, of the Code).

HAS

- the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019;
- annotation in the Authority's internal register pursuant to art. 17 of the Regulation of the Guarantor n. 1/2019.

Pursuant to art. 78 of the Regulation, of the articles 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision it is possible to lodge an 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 appellant resides abroad.

Rome, 11 February 2021

PRESIDENT

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THE SPEAKER

Cerrina Feroni

THE SECRETARY GENERAL

Matthew