

[doc. web no. 9486531]

Injunction order against the Municipality of Collegno - 15 October 2020

Register of measures

no. 183 of 15 October 2020

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stazione, president, prof.ssa Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, components, and dr. Claudio Filippi, deputy secretary general;

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 repealing 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 natural persons 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 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.gpdp.it, doc. web no. 9107633 (hereinafter "Regulation of the Guarantor n. 1/2019");

Given the documentation in the deeds;

Given the observations made by the Deputy Secretary General pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the Guarantor's office for the protection of personal data, doc. web no. 1098801;

Supervisor Prof. Geneva Cerrina Feroni;

WHEREAS

1. The complaint.

With a complaint dated June 18, 2019, presented pursuant to art. 77 of the Regulation, Mr. XX complained that, on 7 March 2019, the Municipality of Collegno served him with a report of assessment of violation of art. 142 of Legislative Decree 30 April

1992, n. 285 (New Highway Code), containing information on the processing of personal data that does not comply with articles 12 ff. of the Regulation, also with reference to the retention time of the images taken by the video surveillance systems of the Municipality, which, in the opinion of the complainant, would have been used to ascertain the violation, in combination with the automatic speed detection device.

Furthermore, the Municipality did not affix the simplified information signs on the processing of personal data near the cameras in question, since only the speed control signs were present but not also those relating to entry into a video-monitored area. The complainant also complained that he had exercised, pursuant to art. 15 of the Regulation, the right of access to one's personal data vis-à-vis the Municipality with a PEC message sent on 12 March 2019, without having obtained any response from the Body, despite the sending of a reminder note with a PEC message of 10 May 2019.

2. The preliminary investigation.

With a note dated 13 February 2020 (prot. n. 0010138/2020), sent to the complainant and a copy to the Authority, the Municipality responded to the request of the complainant to exercise the right of access to their personal data, stating, in particular , that:

- "the control station where the fixed infringement documenter is located is indicated in advance and clearly visible by means of suitable signs bearing the wording "electronic speed control" in accordance with current legislation; the location is also punctually signaled by installing a road sign";
- "the "video supervised area" signs are present, as the station is equipped with a context camera for the prevention and repression of any vandalism".

With a note dated 10 March 2020, in response to a request for information (prot. n. 6295 of 14 February 2020), the Municipality, reiterating what has already been referred to the complainant in its note dated 13 February 2020, has, in particular, declared, that:

- "the image relating to the violation comes from the device, correctly signalled, for detecting the speed. The video surveillance system present in the area, which is also suitably marked, is aimed at preventing and repressing any vandalism that may be committed to the detriment of the speed camera itself";
- "on 21 February 2020 with a note received under prot. 13080 of 24/02/2020, [the complainant], having taken note of the answers provided, requested a reason for the delay with which the Data Controller provided this response, which provided a

subsequent communication with note prot.17257 dated 09/03/2020".

In this note of 9 March 2020, the Municipality declared, in particular, that:

- "the[']application for the right to access personal data was received by the Municipality [...] in the context of an activity to update the privacy system and more precisely the organizational measures aimed at guaranteeing the protection of personal data and satisfying the requests for the rights of the interested parties pursuant to articles 15 et seq. of the GDPR";
- "the Data Controller had provisionally inserted in the contact details of the brief information, referred to in the report [...], the certified e-mail address of the Municipality [...], to which numerous requests are received daily [...]";
- "the choice of the aforementioned PEC was temporary in nature, as the opening of a communication channel dedicated to the management of requests for the rights of data subjects on privacy was expected";
- "the aforementioned channel was activated in October 2019, with the opening of the following dedicated email address privacy@comune.collegno.to.it which allows to avoid errors or delays in addressing requests to the competent subjects as well as in timely evasion of the same";
- "as a greater guarantee of the management of requests to exercise the rights of the interested parties, the Municipality of Collegno, in the meantime, has adopted with resolution of the Municipal Council n. 6 dated 15/01/2020 [...] a specific internal procedure called "Procedure for the management of requests from interested parties"";
- "unfortunately, the overall update of the privacy system has undergone a prolonged delay due to the internal organizational difficulties of the Municipality that have occurred over the course of several months, also due to the transition period relating to the retirement of the Secretary General, identified as Privacy contact person at organizational level, and the appointment and installation of the new [Secretary General]".

Based on the elements acquired, also through the documentation sent and the facts that emerged during the preliminary investigation, the Office notified the Municipality (prot. note no. 19368 of 27 May 2020), as data controller, pursuant to of the art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the provisions pursuant to art. 58, par. 2, of the Regulation, concerning the alleged violation of art. 12, par. 1, 3 and 4, of the Regulation, inviting the Municipality to produce defense writings or documents to the Guarantor or to ask to be heard by the Authority (art. 166, paragraphs 6 and 7, of the Code, as well as art. 18, paragraph 1, by Law No. 689 of 24 November 1981).

The Municipality sent its defense briefs with a note dated 25 June 2020 (prot. n. 0017730/2020), reiterating what had already

been stated in its notes dated 9 and 10 March 2020 and also representing that:

- the delay in responding to the data subject's exercise request is "attributable to an involuntary error";
- the Municipality, "as soon as it became aware of the fact, promptly took action to verify what was requested [by the complainant] and implement the security measures";
- "no further notification of non-compliance with the obligation to respond within the term indicated by art. 12 GDPR was received outside of the one object of the complaint presented [by the complainant]".

3. Outcome of the preliminary investigation.

The art. 12 of the Regulation provides that the data controller must provide the data subject with information relating to the action taken regarding a request pursuant to articles 15 to 22 of the Regulation without unjustified delay and, in any case, at the latest within one month of receipt of the request itself (par. 3). If he does not comply with the request of the interested party, the data controller must inform the interested party without delay, and at the latest within one month of receiving the request, of the reasons for the non-compliance and of the possibility of proposing a complaint to a supervisory authority and to propose a judicial appeal (par. 4). The owner is also required to adopt appropriate measures to provide data subjects with all the communications referred to in articles 15 to 22 of the Regulation (par. 1).

In the case subject to the complaint, the Municipality responded to the request to exercise the right of access to personal data, presented by the complainant on 12 March 2019, only on 13 February 2020, and, therefore, well after the deadline of one month provided for by art. 12 of the Regulation, without, however, having informed the complainant of the reasons for the non-compliance and of the possibility of proposing a complaint to a supervisory authority and of proposing a judicial appeal within the same term.

Furthermore, as declared by the Municipality, the lack of timely response to the complainant's request was due to the delay with which the Municipality's "overall privacy system update" was carried out, "due to the organizational difficulties within the Municipality which occurred in several months", since an internal procedure was adopted for the management of requests to exercise the rights of the interested parties only on 15 January 2020. Therefore, at the time when the facts object of the complaint occurred, the Municipality had failed to adopt appropriate measures to promptly provide interested parties with communications in relation to the exercise of their rights provided for by articles 15 to 22 of the Regulation, in violation of art. 12, par. 1, of the same.

With regard to what is complained of in the complaint, in relation to the omitted or unsuitable information on the processing of personal data, it is instead noted that, as declared by the Municipality, the image relating to the dispute of violation of the Highway Code was generated by the automatic speed detection and that the video surveillance system present in the area, which is suitably marked, is, instead, aimed at the prevention and repression of any vandalism that may be committed to the detriment of the device itself; it does not appear that the complainant's image was filmed by this video surveillance system. Instead, it appears from the documents that the Municipality has affixed signs to signal the use of automatic speed detection devices in the road section in question (see paragraph 5.3.2 of the "Provision on video surveillance" of 8 April 2010, doc web no. 1712680).

4. Conclusions

In the light of the assessments referred to above, taking into account the statements made by the data controller during the preliminary investigation ☐ the truthfulness of which may be called upon to answer pursuant to art. 168 of the Code ☐ it is believed that, limited to the profile relating to the omitted or inadequate information on the processing of personal data, the archiving should be ordered, since the details of a violation of the relevant discipline in the matter of personal data protection.

Otherwise, with regard to the remaining profiles of the complaint, the elements provided by the data controller in the defense briefs in relation to the administrative disputes, although worthy of consideration, do not allow the findings notified by the Office to be overcome with the act of initiation of the procedure and are insufficient to allow the filing of the present proceeding, since none of the cases envisaged by art. 11 of the Regulation of the Guarantor n. 1/2019.

It is also represented that the violation of the legislation on personal data by the Municipality, subject of the investigation, took place in full force of the provisions of the Regulation, and that, therefore, for the purpose of determining the applicable regulatory framework under the time profile (art. 1, paragraph 2, of the law of November 24, 1981, n. 689), these constitute the provisions in force at the time of the committed violation, which in the present case, with regard to the failure to respond to the request to exercise the right of access, took place on 12 April 2019, when the 30-day term within which the Municipality should have provided a reply to the request of the interested party to exercise the right of access has expired, while, with regard to the failure to adopt appropriate measures to promptly provide interested parties with communications in relation to the exercise of their rights provided for in articles 15 to 22 of the Regulation, began in coinciding with the effective date of the Regulation (May 25, 2018) and ended on January 15, 2020, when the Municipality adopted a specific internal procedure for the management of

the requests of the interested parties. Therefore, at the time of the violation committed, the Regulation was fully effective.

In relation to the alleged violation of art. 12, par. 1, 3 and 4 of the Regulation, therefore, the preliminary assessments of the Office are confirmed and the illegality of the processing of personal data carried out by the Municipality of Collegno is noted for not having promptly responded to the request of the complainant to exercise the right access to personal data; not having promptly informed the same of the reasons for the non-compliance and of the possibility to lodge a complaint with a supervisory authority and to lodge a judicial appeal; as well as for not having taken appropriate measures to promptly provide interested parties with communications in relation to the exercise of their rights provided for by articles 15 to 22 of the Regulation.

The violation of the aforementioned provisions makes the administrative sanction envisaged by art. 83, par. 5, of the Regulation, pursuant to articles 58, par. 2, lit. i), and 83, par. 3, of the same Regulation.

In this context, considering, in any case, that the conduct has exhausted its effects, given that a response to the request to exercise the rights of the interested party has been provided, albeit belatedly, and measures have been taken to provide feedback to the interested parties who exercise their rights towards the Municipality, the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2, of the Regulation.

5. Adoption of the injunction order for the application of the pecuniary administrative sanction and accessory sanctions (articles 58, paragraph 2, letter i and 83 of the Regulation; article 166, paragraph 7, of the Code).

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 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, according to the circumstances of each single case" and, 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 whole or in part, on the website of the Guarantor pursuant to article 166, paragraph 7, of the Code" (art. 16, paragraph 1, of the Guarantor's Regulation no. 1/2019).

In this regard, the violation of the aforementioned provision is subject to the application of the pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation.

The aforementioned pecuniary administrative sanction imposed, depending on 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 relation to the aforementioned elements, the considerable period of time that elapsed between the date on which the interested party exercised his rights (March 12, 2019) and the one on which the Municipality provided him, albeit belatedly, with its response was considered (13 February 2020), as well as the fact that the untimely response from the Municipality was caused by the failure to adopt appropriate measures aimed at satisfying the requests to exercise the rights of the interested parties.

On the other hand, it was taken into consideration that, according to what was declared by the Municipality, this is the first case, which has involved the Municipality, of untimely response to a request to exercise the rights of an interested party. Furthermore, there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction in the amount of 2,000.00 (two thousand) euros for the violation of art. 12, par. 1, 3 and 4, of the Regulation.

Taking into account the fact that the untimely response from the Municipality was caused by the failure to adopt appropriate measures aimed at satisfying the requests to exercise the rights of the interested parties, it is also believed that the ancillary sanction of publication on the website of the Guarantor of the this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Regulation of the Guarantor n. 1/2019.

Finally, it should be noted that the conditions pursuant to art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

ALL THIS CONSIDERING THE GUARANTOR

pursuant to art. 57, par. 1, lit. f), of the Regulation, declares the conduct held by the Municipality of Collegno to be unlawful, described in the terms referred to in the justification, consisting in the violation of art. 12, par. 1, 3 and 4, of the Regulation, in the terms referred to in the justification

ORDER

to the Municipality of Collegno, in the person of its pro-tempore legal representative, with registered office in Piazza Del Municipio 1 - 10093 Collegno (TO), Tax Code 00524380011, pursuant to articles 58, par. 2, lit. i), and 83, par. 5, of the Regulation, to pay the sum of 2,000.00 (two thousand) euros as an administrative fine for the violations indicated in the justification.

In this regard, it is recalled 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 30 days from the date of notification of this provision, pursuant to art. 166, paragraph 8, of the Code (see also art. 10, paragraph 3, of Legislative Decree no. 150 of 09/01/2011)

ENJOYS

to the aforementioned Municipality, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of Euro 2,000.00 (two 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 art. 27 of the law no. 689/1981;

HAS

pursuant to art. 166, paragraph 7, of the Code, the publication of this provision on the website of the Guarantor, believing that the conditions set out in art. 17 of the Regulation of the Guarantor n. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

Pursuant to articles 78 of the Regulation, 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, 15 October 2020

PRESIDENT

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THE SPEAKER

Cerrina Feroni

THE DEPUTY SECRETARY GENERAL

Philippi