

[doc. web no. 9557753]

Injunction order against the Municipality of Santo Stefano Belbo - 17 December 2020

Register of measures

no. 274 of 17 December 2020

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 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 general provision n. 243 of 15/5/2014 containing the «Guidelines 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 bodies», published in the Official Gazette no. 134 of 12/6/2014 and in www.gpdp.it, doc. web no. 3134436 (hereinafter "Guidelines on transparency");

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");

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.gpdp.it, doc. web no. 1098801;

Speaker the lawyer Guido Scorza;

WHEREAS

1. Introduction

This Authority has received a complaint regarding the publication on the institutional website of the Municipality of Santo Stefano Belbo of Ms. XX's personal data and information (hereinafter "the complainant").

In particular, the publication in the online praetorian register of the General Affairs Service Resolution no. XX of the XX concerning «XX». The aforesaid decision contained personal data and information of the complainant, including, in addition to the name and surname, the acknowledgment of the liquidation of the litigation costs, and the indication of the IBAN code of the current account of the same.

The aforementioned Municipality with the note prot. no. XX of the XX communicated that it had provided for "the correction of the text of the provision in question with the elimination of the reference to the iban from the publication on the institutional website of the Body".

Nonetheless, from the preliminary verification carried out by the Department on the 20th date, it emerged that on the institutional website of the Municipality of Santo Stefano Belbo, in the "Transparent Administration"/"Provvedimenti"/"Provvedimenti managerial" section, it was still possible to access the history of measures adopted by political bodies and managers (url: <http://...>), where - using the relative search mask - it was possible to view and download the following documents:

- 1) Determination of the general affairs service n. XX of the XX of the Service Manager, having as object «XX» (url: <http://...>);
- 2) Attachment containing «XX» of the general affairs service n. XX of XX (url: <http://...>).

The aforementioned documents identified in nos. 1 and 2, while no longer reporting the claimant's IBAN code, still contained unencrypted Ms XX's personal identification data with information regarding the proceedings instituted against the Municipality and the liquidation of the sums paid in favor of the claimant.

With a subsequent e-mail from the XX, the Municipality confirmed the definitive removal from the website, through the external company in charge of the publications, of the documents described above.

2. Applicable legislation.

Pursuant to the legislation on the matter, "personal data" is "any information relating to an identified or identifiable natural person ("interested party")" and "an identifiable natural person is one who can be identified, directly or indirectly, with particular reference to a identifier such as a name, an identification number, location data, an online identifier or one or more

characteristic elements of its physical, physiological, genetic, psychic, economic, cultural or social identity" (Article 4, paragraph 1 , n. 1, of the GDPR).

The processing of personal data must also take place in compliance with the principles indicated in the art. 5 of the GDPR, 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 this context, the processing of personal data carried out by public subjects (such as the Municipality) is lawful only if 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, letters c and e, of the GDPR). It is also foreseen that «Member States may maintain [...] 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 specific requirements for the treatment and other measures aimed at guaranteeing lawful and correct treatment [...]" (art. 6, paragraph 2, of the RGD), with the consequence that the provisions contained in the art. 2-ter, paragraphs 1 and 3, of the Code, where it is envisaged that the operation of dissemination of personal data (such as publication on the Internet) by public entities is permitted only when required by law or, in cases provided for by law, regulation (of the same tenor also the previous article 19, paragraph 3, of the Code).

In this regard, state sector legislation provides that «All the resolutions of the municipality and the province are published by publication on the praetorian register, at the headquarters of the institution, for fifteen consecutive days, except for specific provisions of the law» (art. 124 , paragraph 1, of the legislative decree 18/8/2000 n. 267).

Furthermore, the Guarantor has provided specific indications to the public administrations regarding the precautions to be taken for the dissemination of personal data on the Internet for purposes of transparency and publicity of the administrative action with its own Guidelines on transparency, also with reference to the publications in the online praetorian register of local authorities.

In the aforementioned Guidelines, it is expressly provided that once the time period established by the individual disciplines for the publication of the deeds and documents in the praetorian register has elapsed:

- «local authorities cannot continue to disseminate the personal data contained therein. Otherwise, for the period exceeding the duration envisaged by the reference legislation, there would be an illicit dissemination of personal data because it is not supported by suitable regulatory conditions [...]. In this regard, for example, the permanence on the web of personal data contained in the resolutions of local authorities beyond the fifteen-day deadline, established by art. 124 of the aforementioned d. lgs. no. 267/2000, can integrate a violation of the aforementioned art. 19, paragraph 3, of the Code [editor's note today reproduced in the art. 2-ter, paragraphs 1 and 3, of the Code], where there is no different legislative or regulatory parameter that provides for its dissemination [...]. [In this hypothesis] if the local authorities want to continue to keep the published deeds and documents on their institutional website, for example in the sections dedicated to the archives of the deeds and/or the legislation of the entity, they must take the appropriate precautions for the protection of personal data. In such cases, therefore, it is necessary to obscure in the published documentation the data and information suitable for identifying, even indirectly, the interested parties» (part two, paragraph 3.a).

In the same Guidelines it is also indicated that in compliance with the principles of necessity, pertinence and non-excess (see art. 5, paragraph 1, letter c, of the GDPR, but with the same content also the pre-current articles 3 and 11, paragraph 1, letter d, of the Code) "It is not [...] justified to disseminate, among other things, data such as, for example, [...] the bank details where the contributions or economic benefits are credited (codes IBAN [...])" (see first part, par. 9.c).

3. Preliminary evaluations of the Office on the processing of personal data carried out.

From the checks carried out on the basis of the elements acquired and the facts that emerged following the preliminary investigation, as well as the subsequent assessments, the Office with note prot. no. XX of the XX ascertained that the Municipality of Santo Stefano Belbo, by disseminating the complainant's personal data and information (such as, in addition to the name and surname, also the news concerning the proceedings brought against the Municipality, the acknowledgment of the liquidation of the litigation expenses, and, initially, also the indication of the IBAN code of the current account of the same) - contained in the Determination of the general affairs service n. XX of the XX and in the related annex - has carried out a processing of personal data that does not comply with the relevant regulations on the protection of personal data contained in the RGD. Therefore, with the same note, the Municipality was notified of the violations carried out (pursuant to article 166, paragraph 5, of the Code), communicating the initiation of the procedure for the adoption of the measures referred to in article 58, par. 2, of the RGD and inviting the aforementioned entity to send the Guarantor defense writings or documents and,

possibly, to ask to be heard by this 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).

4. Defensive memories.

With the note prot. no. XX of the XX the Municipality of Santo Stefano Belbo sent its defense writings to the Guarantor in relation to the notified violations.

In this regard, it should be remembered that, unless the fact constitutes a more serious offence, anyone who, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code, entitled «False statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the Guarantor».

Specifically, it was highlighted, among other things, that "the Municipality of Santo Stefano Belbo has taken steps to adjust the publication of the provisions [...] and, therefore, the number, date and object of the determination in question. Specifically, the text is no longer present, nor are the attachments, which contained the disputed personal data".

In a subsequent e-mail from the XX, it was also confirmed that he had "proceeded, with the help of the external company that manages the [...] publications, to correct our publications indicated below: <http://...> [...] <http://...> [, which] have been removed[e]".

5. Outcome of the investigation relating to the complaint presented

In the specific case submitted to the examination of the Guarantor, the object of a complaint by the complainant, appears to be the dissemination of personal data contained in documents published online, such as the Determination of the general affairs service n. XX of the XX of the Service Manager concerning «XX» and the relative attachment containing the «XX» of the general affairs service n. XX of the XX. The aforesaid documents contained personal data and information of the complainant, in the text and in the subject, including in addition to the name and surname, the recognition of the settlement of the litigation expenses, and initially also the indication of the IBAN code of the current account of the same.

The Municipality of Santo Stefano Belbo, in its defense briefs, confirmed the online dissemination of the complainant's personal data, representing that it had removed the personal data from the website (initially only the IBAN code and then also all other personal data). These elements, although worthy of consideration, do not however allow us to overcome the findings notified by the Office with the note prot. no. XX of the XX, and are not sufficient to allow the filing of this proceeding pursuant to

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 aforementioned Municipality is noted, as:

- 1) personal data have been published which - in the light of the indications contained in the Guidelines of the Guarantor mentioned above - are excessive with respect to the purpose of the processing with particular reference to the successful dissemination of the IBAN code of the complainant's current account (subsequently obscured), in violation of the art. 5, par. 1, lit. c), of the GDPR (see also the previously applicable article 11, paragraph 1, letter d, of the Code);
- 2) the dissemination on the institutional website of the complainant's personal data - contained in resolution no. 11 of 30/3/2018 and in the relative annex bearing «XX» – for a period exceeding the fifteen days envisaged by art. 124, paragraph 1, of Legislative Decree lgs. no. 267/2000 for publication on the praetorian register, appears to have occurred in the absence of suitable regulatory conditions and, therefore, in violation of art. 2-ter, paragraphs 1 and 3 (and of the previous art. 19 paragraph 3) of the Code, as well as the basic principles of the treatment contained in the articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b) of the GDPR.

Considering, however, that the conduct has exhausted its effects, as the data controller has taken steps to remove the personal data of the complainant described above from the institutional website, without prejudice to what will be said on the application of the pecuniary administrative sanction, there is no the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2 of the GDPR.

6. Adoption of the injunction order for the application of the administrative fine (articles 58, paragraph 2, letter i; 83 GDPR)

The Municipality of Santo Stefano Belbo appears to have violated the articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b) of the GDPR; as well as the art. 2-ter, paragraphs 1 and 3 of the Code.

In this regard, the art. 83, par. 3, of the GDPR, 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 GDPR, which therefore applies to the present case.

It should also be taken into account that, although the documents covered by the complaint published online date back to XX,

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 25/5/2018 in which the RGPD became applicable. In fact, the preliminary investigation documents revealed that the illicit online diffusion continued, for the IBAN code, at least until the reply provided by the Municipality on the XX date (prot. n. XX) and, for the other personal data, until the removal communicated by e-mail of the XX.

The Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the GDPR, 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 framework, «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).

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 GDPR.

In this sense, the detected conduct in violation of the regulations on the protection of personal data concerned the dissemination of personal data not belonging to particular categories or to criminal convictions or crimes (articles 9 and 10 of the GDPR) of two stakeholders and lasted for more than two years. The Municipality of Santo Stefano Belbo, which in any case is a small entity with just under 4,000 inhabitants, has taken steps to obscure the personal data object of the complaint, collaborating with the Authority during the preliminary investigation of the present proceeding to order to remedy the violation – the nature of which appears to be negligent – by mitigating its possible negative effects. There are no relevant previous violations of the GDPR committed by the aforementioned Municipality.

Based on the aforementioned elements, evaluated as a whole, it is deemed necessary to determine pursuant to art. 83, para. 2 and 3, of the RGPD, the amount of the pecuniary sanction, provided for by art. 83, par. 5, of the RGPD, in the amount of 4,000.00 (four thousand) euros for the violation of articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter.

b) of the GDPR; as well as of the art. 2-ter, paragraphs 1 and 3, of the Code (see also the previously applicable articles 11, paragraph 1, letter d, and 19, paragraph 3, of the same Code), as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to of the art. 83, par. 1, of the same GDPR.

In relation to the specific circumstances of the present case, relating to the dissemination of personal data on the web in the absence of an appropriate regulatory basis, it is also believed that the ancillary sanction of the publication of this provision on the website of the Guarantor must be applied, provided for by art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation 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 the Municipality of Santo Stefano Belbo in the terms indicated in the justification pursuant to articles 58, par. 2, lit. i) and 83 of the GDPR

ORDER

to the Municipality of Santo Stefano Belbo, in the person of its pro-tempore legal representative, with registered office in Piazza Umberto I n. 1, zip code 12058, Santo Stefano Belbo (CN) – Fiscal Code 00364170043 to pay the sum of 4,000.00 (four thousand) euros as an administrative fine for the violations referred to in the justification;

ENJOYS

to the same Municipality to pay the sum of 4,000.00 (four 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's 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 GDPR, 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, 17 December 2020

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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