

Injunction order against GEDI News Network S.p.A. - September 29, 2021

Record of measures

n. 355 of 29 September 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 dr. Fabio Mattei, general secretary;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter, the "Regulation");

GIVEN the Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 (Legislative Decree 30 June 2003, n.196, as amended by Legislative Decree 10 August 2018, no. 101, hereinafter the "Code");

GIVEN the complaint submitted to the Guarantor on 23 December 2020, pursuant to art. 77 of the Regulations, with which XX, I represent and defended by the lawyer Alfredo Antonini, complained of a violation of the current legislation on the protection of personal data in relation to the dissemination by "Il Piccolo" (edition of Monfalcone and Trieste), in the article "Lost his leg in port: 500 thousand euros of damages ", the identification data of the complainant, as well as other detailed information on the case in which Mr. XX was involved, losing a leg following an accident at work;

CONSIDERING that the interested party, in particular, highlighted:

- to have obtained, following the civil dispute initiated against their employer, compensation for the damage suffered;
- to have kept confidential the fact of having filed an action for compensation and, even more so, the amount of compensation obtained;
- that the article, referring to the criminal trial initiated for the facts described above, in addition to reporting numerous details relating to the matter, also indicated the extent of the compensation paid to him by the insurance company of the employer company, without this having importance with reference to the object of the article, causing a profound psychological disturbance and affecting his life as a couple, considering that the partner was expecting a second child;
- that the newspaper could have omitted the publication of his name, or indicated only the initials, or avoided specifying the

amount of the compensation, interventions that he is now forced to ask the Guarantor;

GIVEN the note dated 2 April 2021 with which this Authority asked GEDI News Network S.p.A. (hereinafter "GEDI"), as publisher of Il Piccolo di Trieste, to provide feedback to the complainant's requests and to make known if there was an intention to comply with them;

GIVEN the note of 22 April 2021, with which the owner declared that:

- the article reports a news of public interest, referring to a criminal judgment and the sentence of application of the penalty at the request of the parties made against one of the co-defendants;
- the activities and decisions of the judicial authority are public and fully knowable, as confirmed by Articles 51 and 52 of the Code, for which, without prejudice to the protection of persons offended by acts of sexual violence and of minors, there is a general publicity regime for judicial authority measures;
- the narration of an accident at work makes the victim identifiable (at least in the circle of his acquaintances), regardless of the publication of his personal details;
- the complainant does not complain about the spread of the impairment, since the loss of the leg is evident for anyone who meets him and, in any case, it has also been made public on his Facebook profile;
- the validity of the sole complaint of the interested party is not understood, who reports "that he has kept the fact of the compensation reserved for himself, without referring it to others" and that the publication of this information would be reconnected and "multiple telephone contacts by of subjects interested in the affair "and repercussions" on family dynamics ";
- the amount of compensation paid by the employer constitutes one of the essential elements of the news, representing to the public the economic measure of the employer's liability and allowing the consequent assessments;
- the information was disseminated for the exclusive pursuit of journalistic purposes pursuant to Articles 136 and ss. of the Code;

GIVEN the note of this Authority of 11 June 2021, with which, pursuant to art. 166, paragraph 5, of the Code, the data controller was notified of the initiation of the procedure for the possible adoption of the measures referred to in art. 58, par. 2, of the Regulation and the alleged violations of the law were also notified to the same owner, identified, in this case, in violation of art. 5 of the Regulation and art. 2-quater, paragraphs 4, 137 and 139 of the Code and of articles 6 and 10 of the Deontological Rules;

GIVEN the note of 8 July 2021, in which the data controller declared that the complainant:

- has not reported a violation of his subjective right to confidentiality in terms of the dissemination of data on his state of health;
- did not contest the information from the point of view of the narrative of the circumstances that led to the injury (accident at work);
- considered confidential and not essential to correct information only the news of having obtained compensation and the indication of the relative measure;

CONSIDERING that, unless the fact constitutes a more serious crime, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false acts or documents, is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the execution of the tasks or the exercise of the powers of the Guarantor";

Whereas:

- the disputed article must be traced back to the treatments carried out in the exercise of freedom of expression and which therefore apply in their entirety the articles 136 - 139 of the Code and the Deontological Rules referred to in art. 139 of the same Code;
- art. 137, paragraph 3, of the Code and arts. 6 and 10 of the Deontological Rules identify compliance with the principle of "essentiality of information regarding facts of public interest" as a limit to the dissemination of personal data for the purposes described, to which the journalist is required, in particular when dealing with related issues. the state of health of a person;

NOTING that compliance with the aforementioned ethical rules is an essential condition for the lawfulness and correctness of the processing of personal data (art. 2-quater of the Code);

NOTING that, the article in question is in contrast with these provisions as:

- identification data of the complainant have been published, together with detailed information relating to the consequences, the state of health itself, as well as the extent of the compensation for the damage that has been recognized;
- the article, providing the name and surname of the complainant, victim of a serious accident at work, and giving notice of the amount of compensation for the damages suffered obtained by the same out of court, contains, as a whole, excess data that expose the his story to an attention that goes far beyond the circle of his acquaintances, without the indication of his name appearing essential for the purposes of correct information on the affair itself;

Hence the unlawfulness of the article object of the complaint has been detected as it is in contrast with the aforementioned provisions - in particular, with Articles 137, paragraph 3, and 139 of the Code and arts. 6 and 10 of the Deontological Rules - and therefore with the general principles of lawfulness and correctness of the processing of personal data pursuant to art. 5, par. 1 letter a), of the Regulations;

CONSIDERED pursuant to art. 57 par. 1, lett. f), of the Regulations to have to evaluate the well-founded complaint and for the effect, pursuant to art. 58, par. 2, of the Regulation to impose on GEDI News Network S.p.A., pursuant to art. 58, par. 2, lett. c) and g), of the Regulations, the extent of the prohibition of processing, to be considered as referring to the further dissemination of the personal details of the complainant also online and also in the historical archive of the newspaper, as well as in other articles possibly present in websites attributable to the same owner;

CONSIDERING it also necessary, due to the violation found, to adopt an injunction order, pursuant to Articles 166, paragraph 7, of the Code and 18 of law no. 689/1981, for application to GEDI News Network S.p.A. of the pecuniary administrative sanction provided in conjunction with art. 2-quater, 166, paragraph 2, of the Code, and 83, par. 3 and 5, of the Regulations;

NOTING that for the determination of the amount of the financial penalty, it is necessary to take into account the elements indicated in art. 83, par. 2, of the Regulation and that in the present case it is necessary to take into consideration, on the one hand:

a) the particular damage to the dignity and confidentiality of the person concerned resulting from the dissemination of data relating to the circumstances that led to the injury to the complainant and therefore related to his health, as well as the amount of compensation received out of court;

b) the effects of the processing, in consideration of the negative impact it had on the personal sphere of the complainant in the social context of reference as well as the risks generated by the aforementioned disclosure for the rights and freedoms of the data subject, also relating to the patrimonial sphere, that they would not have occurred if such information had not been made public (Article 83, paragraph 2, letter a) of the Regulation);

c) the fact that the owner has already been assessed by this Authority for profiles similar to those reported in this complaint (Article 83, paragraph 2, letter e) of the Regulation: provision. n. 364 of 10 July 2014 [Doc. web n. 3352396] and prov. n. 28 of 6 February 2020 [Doc. web n. 9283121];

d) the relevant organizational, economic and professional conditions of the offender;

and, on the other hand:

g) the purposes pursued by the owner, attributable to the exercise of the right to press and freedom of information and, therefore, the need to ensure in this context the relative balance with the complainant's fundamental right to the protection of personal data concerning her, in accordance with the provisions of the Regulation (Article 85) and the Code (Articles 136 et seq.);

h) the fact that the disability condition was in any case made public by the person concerned on their Facebook profile;

CONSIDERING the above parameters and the principles of effectiveness, proportionality and dissuasiveness indicated in art. 83, par. 1, of the Regulations;

CONSIDERING that, on the basis of all the elements indicated above, the pecuniary administrative sanction must be applied in the amount of € 30,000.00 (thirty thousand euros);

CONSIDERING also that, pursuant to art. 166, paragraph 7, of the Code, and 16, paragraph 1, of the Guarantor Regulation no. 1/2019, this provision should be published on the Guarantor's website, as an ancillary sanction;

CONSIDERING that the conditions exist to proceed with the annotation in the internal register of the Authority referred to in art. 57, par. 1, lett. u), of the Regulation, in relation to the measures adopted in this case in compliance with art. 58, par. 2, of the same Regulation;

HAVING REGARD to the documentation on file;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000;

RAPPORTEUR prof. Pasquale Stanzione;

ALL OF THIS PREVIOUSLY

pursuant to art. 57 par. 1, lett. f) of the Regulations, declares the complaint founded and illegal the conduct described in the introduction and, for the effect, requires GEDI News Network S.p.A. the extent of the prohibition of processing, to be considered as referring to the further dissemination of the personal details of the complainant also online and also in the historical archive of the newspaper, as well as in other articles that may be present on websites attributable to the same owner;

ORDER

pursuant to art. 58, paragraph 2 letter. i) and 83 of the Regulation to GEDI News Network S.p.A. to pay the sum of € 30,000.00

(thirty thousand euros) as a pecuniary administrative sanction for the violations indicated in the motivation, representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within thirty days, an amount equal to half of the sanction imposed;

HAS

pursuant to art. 166, paragraph 7, of the Code, the full publication of this provision on the website of the Guarantor and believes that the conditions set out in art. 17 of Regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

Pursuant to art. 78 of the Regulation, as well as art. 152 of the Code and 10 of the d. lg. 1 September 2011, n. 150, against this provision, opposition may be proposed to the ordinary judicial authority, with an appeal filed, alternatively, at the court of the place where the data controller resides or is based or at that of the place of residence of the interested party within the deadline of thirty days from the date of communication of the provision itself or sixty days if the applicant resides abroad.

Rome, 29 September 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei