

Injunction order against the Local Health Authority of Alessandria - 31 January 2019

Register of measures

no. 22 of 31 January 2019

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, in the presence of Dr. Antonello Soro, president, of dott.ssa Augusta Iannini, vice president, of dott.ssa Giovanna Bianchi Clerici and of dott.ssa Licia Califano, members and of dott. Giuseppe Busia, general secretary;

CONSIDERING the art. 1, paragraph 2, of the law of 24 November 1981, n. 689, pursuant to which the laws that provide for administrative sanctions are applied only in the cases and for the times considered in them;

NOTING that the Office of the Guarantor for the protection of personal data (hereinafter Guarantor) has carried out, also making use of the Special Privacy Unit of the Finance Police which has been delegated the execution of the request for information no. 31538/114083 of 3 October 2017 formulated pursuant to art. 157 of the legislative decree lgs. June 30, 2003 no. 196, containing the Code regarding the protection of personal data (hereinafter the "Code") the results of which were formalized with the report of operations carried out dated 29 and 30 November 2017, a control activity at the Santo Spirito Hospital in Casale Monferrato as a hospital unit of the Local Health Authority of Alessandria VAT number: 02190140067, with headquarters in Alessandria, via Venezia n. 6. This control activity, continued with the formulation of further requests for information nos.rr. 10014 of 3 April 2018 and 17706 of 12 June 2018 by the Department of Public Freedom and Health, has allowed us to ascertain that the Local Health Authority of Alessandria has carried out, as owner, a treatment of personal data through the health dossier without, on the date of the inspections carried out by the Guardia di Finanza on 29 and 30 November 2017 and therefore before the date of full application of the General Data Protection Regulation (25 May 2018), suitable information had been provided and specific consent had been collected of the interested parties pursuant to articles 13, 23, 26, 75, 76 et seq. of the Code;

HAVING REGARD to the dispute report no. 31190/123408 of 22 October 2018 drawn up by the Guarantor's Office, with which two administrative violations were reported to the Local Health Authority of Alessandria, which can be briefly defined pursuant to art. 16 of the law of 24 November 1981, n. 689, provided for by art. 161 and by the art. 162, paragraph 2-bis of the Code, in relation to art. 13 and art. 23;

HAVING EXAMINED the report of the Guarantor's Office prepared pursuant to art. 17 of the law of 24 November 1981, n. 689, from which the reduced payment does not appear to have been made;

HAVING REGARD TO the written defense received on 23 November 2018 sent pursuant to art. 18 of the law n. 689/1981, with which the Local Health Authority of Alessandria, after reiterating "(...) the pre-eminent interest of protecting the right to health and the cost/benefit ratio for the Health Authority, as well as the collaboration immediately shown and carried out (...) in trying to comply with the provisions of this Hon. Authority on the subject (of health dossiers) (...)", he highlighted how "(...) the system (...) in use at the Santo Spirito Hospital of Casale Monferrato (...) allowed and allows access to healthcare services and patient reports only among certain healthcare services and not overall among all the healthcare facilities of all the hospitals and territorial units of the A.S.L. TO THE. The same, therefore, cannot be shared in an absolute way within the Company, but has a partial usability. Precisely because of this partial nature, this Company has considered and believes that it does not have an instrument having the charisms established by the Guidelines on the matter";

CONSIDERING that the arguments put forward do not allow for the exclusion of the liability of the Local Health Authority of Alessandria in relation to the dispute in question. Having taken note of the illustrated initiatives put in place by the Healthcare Company as owner regarding the processing of personal data through the health dossier and aimed at implementing what is indicated by the Guarantor's Office regarding the adaptation of the processing of personal data of the interested parties through the health dossier, it is noted that the offender has not provided any additional evaluation element with respect to what has already been examined during the investigation by the competent division of the Authority which, with the final note of the administrative control procedure (prot. 30403 of the 15 October 2018 already indicated in the dispute report that deals with us), has ascertained the illegality of the processing. Therefore, reiterating how the disputed conduct, attributable to the processing of data of the interested parties through the health dossier, has been ascertained, for the purposes of art. 13 of the law n. 689/1981, with note no. 30411 of 15 October 2018, also expressly mentioned in the dispute report in question, it should be noted that, in the case in question, none of the constituent elements of the discipline of excusable error pursuant to art. 3 of the law n. 689/1981, also on the basis of what is asserted by the jurisprudence (Cass. Civ. section I of 15 May 2006 n. 11012; Cass. Civ. section II of 13 March 2006, n. 5426);

NOTING, therefore, that the Local Health Authority of Alessandria carried out, on the date of the inspections carried out by the Guardia di Finanza on 29 and 30 November 2017 and therefore before the date of full application of the General Data

Protection Regulation (25 May 2018), a processing of personal data (art. 4 paragraph 1, letter a) and b) of the Code) through an IT system attributable to the concept of health dossier without providing suitable information and obtaining specific consent from the interested parties pursuant to articles 13, 23, 26, 75, 76 and following. of the Code;

CONSIDERING the art. 161 of the Code, which punishes the violation of the provisions of art. 13 of the same Code, with the administrative sanction of the payment of a sum from six thousand euros to thirty-six thousand euros;

CONSIDERING the art. 162, paragraph 2-bis, of the Code which punishes the violation of the provisions indicated in the articles 23 and 26 of the Code with the administrative sanction of the payment of a sum from ten thousand euros to one hundred and twenty thousand euros;

CONSIDERING that, for the purposes 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, of the seriousness of the violation, of the personality and economic conditions of the offender and that, therefore, the amount of the pecuniary sanction with reference to the violation referred to in art. 161 must be quantified in the minimum amount of 6,000.00 (six thousand) euros and the amount of the pecuniary sanction with reference to the violation pursuant to art. 162, paragraph 2-bis, in relation to articles 23 and 26 of the Code, must be quantified in the minimum amount of Euro 10,000.00 (ten thousand) for a total quantification of Euro 16,000.00 (sixteen thousand);

HAVING REGARD to the documentation in the deeds;

HAVING REGARD to the law of 24 November 1981 n. 689, and subsequent modifications and additions;

HAVING REGARD TO the observations of the Office, formulated by the Secretary General pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER Dr. Antonello Soro;

ORDER

to the Local Health Authority of Alessandria VAT number: 02190140067, with headquarters in Alessandria, via Venezia n. 6, in the person of the pro-tempore legal representative, to pay the sum of 16,000.00 (sixteen thousand) euros as a pecuniary administrative sanction for the violations envisaged by articles 161 in relation to the art. 13 of the Code and 162, paragraph 2-bis in relation to art. 23 of the Code, as indicated in the motivation;

ENJOYS

to the same subject to pay the sum of 16,000.00 (sixteen thousand) euros, according to the methods indicated in the attachment, the fractional payments of which will be made by the last day of the month following the one in which the notification of this order will take place, under penalty of adoption of 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 lg. 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, 31 January 2019

PRESIDENT

Soro

THE SPEAKER

Soro

THE SECRETARY GENERAL

Busia