

[doc. web n. 9718196]

Injunction order against Istituto Comprensivo - IC Cosenza III "V. Negroni" - September 16, 2021

Record of measures

n. 321 of 16 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. Claudio Filippi, Deputy Secretary General;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / CE, "General Data Protection Regulation" (hereinafter, "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of individuals with regard to the processing of personal data, as well as to the free circulation of such data and which repeals Directive 95/46 / EC (hereinafter the "Code");

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

Having seen the documentation in the deeds;

Given the observations made by the secretary general pursuant to art. 15 of the Regulation of Guarantor n. 1/2000 on the organization and functioning of the office of the Guarantor for the protection of personal data, Doc. web n. 1098801;

Professor Ginevra Cerrina Feroni will be the speaker;

## WHEREAS

1. the complaint.

With a complaint of the XX, submitted pursuant to art. 77 of the Regulations, the publication, on XX date in the "Notices"

section of the institutional website of the Comprehensive Institute - IC Cosenza III "V. Negroni ", (hereinafter the " Institute "), of" a link, accessible to all, with the provisional rankings of the losing professors in place 2019/2020 containing data suitable for revealing the state of health of the interested parties ".

In particular, it was shown that "next to the teacher's name two asterisks have been noted with the specification:" Beneficiary of Law 104/92 art. 2 paragraph 3 ".

It was also ascertained, during the investigation, that in addition to qualifications and seniority of service, additional information regarding "family needs" attributable to the individual concerned was indicated in the ranking.

Following a request to exercise the rights by the complainant, including the request for deletion of data, the Institute removed the link containing the aforementioned rankings.

## 2. The preliminary activity.

On the basis of the elements acquired, the Office notified, with a note of the XX, prot. n.XX, to the Comprehensive Institute - IC Cosenza III "V. Negroni ", as data controller, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in art. 58, par. 2, of the Regulations, inviting the aforementioned owner to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (Article 166, paragraphs 6 and 7, of the Code; as well as Article 18, paragraph 1, of Law no. . 689 of 11/24/1981).

With the aforementioned note, the Office found that the Institute has published on its institutional website the rankings of the "losers in place 2019/2020" containing, in addition to the personal data of the complainant, also data relating to her health and of other teachers present in the ranking, not necessary for the purpose of the publication.

In particular, it appears that the Institute, by publishing these rankings on the website, has determined the disclosure of personal data in the absence of a suitable regulatory requirement for the dissemination of such information, pursuant to art. 2-ter, paragraphs 1 and 3, of the Code which instead admits the aforementioned possibility by public entities only when the dissemination is required by a law or, in the cases provided for by law, by regulation, as well as the dissemination of related data to health in violation of art. 9, paragraphs. 1, 2 and 4, of the Regulation, and of art. 2-septies, paragraph 8, of the Code. This publication also took place in violation of the principles of "lawfulness, correctness and transparency" as well as "minimization" of processing, pursuant to art. 5, par. 1, lett. a) and c) of the Regulation.

The Institute sent its defense briefs, with a note dated 29 June 2020, representing, in particular, that:

- "the act of publication of the provisional ranking" losers placed 2019/2020 "on its website, [...] this is a mere clerical error and the uploading of files not suitable for publication by the secretariat-personal area offices in the daily administrative work due ";
- "the aforementioned wrong file, and, in question, acted as an important reminder, to then effect the total curtailment of the teacher's name, with CCNI precedence, in the final ranking of teachers" losers place 2019/2020 ";
- "as a result, the file, which was only usable for the preparatory phase of the Personnel Area Office work, was erroneously uploaded in place of the original file concerning the same provisional ranking" losers place 2019/2020 ". [...] The publication referred to in the subject was, abruptly, immediately, removed from the site ".

### 3. Applicable law.

Pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter, the "Regulation"), the processing of personal data by public entities, even when they operate in the context of insolvency procedures and selective personnel, it is lawful, in particular, if the 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 "(art. 6, paragraph 1, lett. c) and e) as well as art. 9 par. 2 lett. b) and art. 88 of the Regulation). The 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 processing, in accordance with paragraph 1, letters c) and e), determining more precisely the 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 art. 2-ter of the Code, according to which the dissemination of personal data in the public sphere is permitted only when required by a 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 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 towards the interested party" as well as "Adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed" (paragraph 1, letters a) and c)).

In any case, the dissemination of data relating to health remains absolutely prohibited (Article 9, paragraphs 1, 2 and 4, of the Regulation, Article 2-septies, paragraph 8, of the Code, or rather of "personal data relating to health physical or mental nature

of a natural person, including the provision of health care services, which reveal information relating to his or her state of health "(art. 4, par. 1, no. 15; recital no. 35 of the Regulation).

With particular reference to the publication of the rankings, moreover, the Guarantor in provision no. 243 of May 15, 2014 (web doc. 3134436) containing the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other obliged entities "with reference to the publicity of the results of the competitive exams and the final rankings, he highlighted that" only the pertinent and not excessive data referring to the interested parties must be disclosed. Therefore, data concerning the contact details of the interested parties cannot be published (think of fixed or mobile telephony users, residence or e-mail address, tax code, Isee indicator, number of disabled children, results of psycho-aptitude tests or educational qualifications), nor those concerning the health conditions of the interested parties (see Article 22, paragraph 8, of the Code) iví including references to conditions of physical and / or mental disability, disability or handicap " (see part two par. 3.b. Guidelines cited. - See also 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 public domain "in [www.gdpd.it](http://www.gdpd.it), web doc. no. 1417809).

#### 4. Conclusions.

In light of the aforementioned assessments, taking into account the statements made by the data controller during the investigation □ the truthfulness of which one may be called to answer pursuant to art. 168 of the Code □ it is noted that the elements provided by the data controller in the defense briefs, although worthy of consideration, do not allow to overcome the findings notified by the Office with the act of initiating the procedure and are insufficient to allow the filing of the this proceeding, since none of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

The processing of the data of the interested parties, which occurred in violation of the regulations on the processing of personal data, began with the publication on 30 April 2019 - in full force of the provisions of the Regulation and of the Code, which therefore constitute the provisions applicable to case in point (art. 1, paragraph 2, of the l. 24 November 1981, n. 689) - in the "Notices" section of the institutional website of the Institute of "a link, accessible to all, with the provisional rankings of the losing teachers place 2019/2020 ", containing personal data also relating to particular family conditions as well as suitable for revealing the state of health of the interested parties, resulting in the online dissemination of such data, and lasted until 18 June 2019, date on which the ranking was removed following a petition for the exercise of rights by the complainant.

Therefore, the preliminary assessments of the Office are confirmed, and the unlawfulness of the processing of personal data carried out by the Comprehensive Institute - IC Cosenza III "V. Negroni ", for having disseminated, keeping online the provisional rankings of the losing professors placed 2019/2020 (over 50 individuals), bearing, in addition to the identification data of the interested parties, the indication, next to the name of the teachers concerned, of some asterisks indicating belonging to the beneficiary categories of the facilities provided for by Law 104/92, in violation of art. 6 and 9 of the Regulation and 2-ter and 2-septies, paragraph 8 of the Code, as well as the basic principles of processing contained in art. 5, par. 1, lett. a) and c) of the Regulations. These principles have recently been confirmed by the Guarantor (see, in particular, Provv. N.51 of 11 February 2021 web doc. N. 9572226; Provv. 30 January 2020, n. 21, web doc. N. 9283014 , Provv. 6 February 2020 n. 27 web doc. N. 9283029, Provv. 12 March 2020 n. 50 web doc. N. 9365159).

For these reasons it is believed that the publication of the rankings of the "losers place 2019/2020" containing personal data, also relating to the health of the complainant and other interested parties in the ranking, took place in violation of Articles 5, 6 and 9 of the Regulation and of the articles 2-ter and 2-septies, paragraph 8, of the Code.

In this context, considering, in any case, that the conduct has exhausted its effects, given that the Institute has declared that it has removed the ranking from its institutional website (see note of 27 May 2020), the prerequisites for the adoption of 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 ancillary sanctions (articles 58, par. 2, lett. I and 83 of the Regulation; art. 166, paragraph 7, of the Code)

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the Regulations as well as art. 166 of the Code, has the power to "inflict an administrative pecuniary 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 each single case "and, in this context," the College [of the Guarantor] adopts the injunction order, with which it also disposes with regard to the application of the ancillary administrative sanction of its publication, in whole or in excerpt, on the website of the Guarantor pursuant to Article 166, paragraph 7, of the Code "(Article 16, paragraph 1, of the Guarantor Regulation no. 1/2019).

In this regard, taking into account art. 83, par. 3, of the Regulation, in the present case - also considering the reference contained in art. 166, paragraph 2, of the Code - the violation of the aforementioned provisions is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the Regulation.

The aforementioned administrative fine imposed, depending on the circumstances of each individual case, must be determined in the amount taking into account the elements provided for by art. 83, par. 2, of the Regulation.

In relation to the aforementioned elements, it was considered that the detected conduct, held in violation of the regulations on the protection of personal data, had as its object the dissemination of personal data of a significant number of interested parties (over 50), including, for some subjects, data relating to health, not necessary with respect to the purposes underlying the publication of the provisional rankings of the losing professors placed 2019/2020, also in light of the indications that, since 2014, the Guarantor has provided to all public subjects in the Lines guide on the processing of personal data, also contained in administrative deeds and documents, carried out for the purposes of advertising and transparency on the web by public entities and other obliged entities, mentioned above.

On the other hand, it was considered: that the publication is due to a mere material error; that the Institute has taken steps to remove the personal data of the interested parties and has therefore collaborated with the Authority during the investigation of this proceeding in order to remedy the violation and mitigate its possible negative effects. It was also favorably acknowledged that there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the pecuniary sanction, in the amount of € 2,000 (two thousand) for the violation of Articles 5, 6 and 9, of the Regulation, as well as of the articles. 2-ter, and 2-septies, paragraph 8 of the Code, as an administrative pecuniary sanction withheld, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account the time frame during which the aforementioned data were made available on the network, it is also believed that the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019.

Finally, it is noted 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.

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1, lett. f), of the Regulations, declares the conduct held by the Comprehensive Institute - IC Cosenza III "V. Negroni ", consisting in the violation of articles 5, 6, 9, of the Regulation, as well as of the articles. 2-ter and 2-septies

paragraph 8 of the Code, within the terms set out in the motivation.

#### ORDER

To the Comprehensive Institute - IC Cosenza III "V. Negroni ", in the person of the pro-tempore legal representative, with registered office in Via Negroni n. 5 - 87100 Cosenza (CS) Tax Code 98094050782, to pay the sum of € 2,000 (two thousand) as a pecuniary administrative sanction for the violations indicated in this provision. It is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within 30 days, an amount equal to half of the sanction imposed.

#### INJUNCES

To the aforementioned Institute, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of € 2,000 (two thousand) according to the methods indicated in the annex, 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 n. 689/1981.

#### HAS

pursuant to art. 166, paragraph 7, of the Code, the publication of this provision on the website of the Guarantor, also recognizing the existence of the conditions referred to 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, 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision, it is possible to 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 applicant resides abroad.

Rome, September 16, 2021

#### PRESIDENT

Stanzione

#### THE RAPPORTEUR

Cerrina Feroni

#### THE DEPUTY SECRETARY GENERAL

Mattei