[doc. web no. 9834477]

Injunction order against the Municipality of Cisterna di Latina - 10 November 2022

Register of measures

no. 365 of 10 November 2022

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 "Regulation");

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196, "Code regarding the protection of personal data", as amended by Legislative Decree 10 August 2018, n. 101, containing provisions for the adaptation of the national legal system to the Regulation (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 April 2019, published in the Official Gazette no. 106 of 8 May 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 of the Office formulated 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 Prof. Geneva Cerrina Feroni;

1. Premise

From a complaint presented to the Authority on 1 October 2021 and integrated on 24 January 2022, it emerged that the Municipality of Cisterna di Latina (hereinafter, the Municipality), would have communicated the personal data of the complainant to third parties, in the context of an application for access to the documents.

The aforementioned complaint also revealed the failure to respond to a request, pursuant to articles 15-22 of the Regulation, presented to the Municipality on 30 July 2021.

With regard to this matter, the same Municipality, on 5 January 2022, sent this Authority the notification of the violation of personal data pursuant to art. 33 of the Regulation.

Lastly, in the context of the complaint, the absence of appointment of the Data Protection Officer (DPO) by this body emerged. In particular, from the latter point of view, it appears that on 6 April 2021, the DPO in office would have resigned and that until January 2022 the Municipality would not have taken steps to confer the office of DPO on others.

Among other things, the check on the register held by this Authority revealed that the contact details of the first outgoing DPO were never communicated to the Authority, while there are two subsequent communications relating to two different DPOs that followed one another over time. Finally, it emerged that the email address rpd@comune.cisterna.latina.it is reported on the Municipality's institutional page as the contact address, which however is not present among the contact details contained in the communications made to this Authority pursuant to of the art. 37, par. 7, of the Regulation.

Finally, a complaint presented by another interested party on 7 February 2022 similarly emerged, in the context of a request for access to documents, the communication of personal data to third parties and the failure to reply to the request presented, in date 16 December 2021, by the complainant, pursuant to articles 15 et seq. of the Regulation.

2. The preliminary investigation

In response to a request for information from the Authority (prot. note no. 13981 of 7 March 2022), the Municipality stated, in particular, that:

- "In relation to the reasons for which it is claimed that the Municipality has communicated the personal data to third parties, - as regards the [complainant ...] it should be noted that: it does not appear that sensitive data have been disclosed. [...] In the documentation extracted from protocol no. [...] the mention of particular data is not evident. In addition to the name and surname, which will be clarified below with regard to the reasons for legitimizing the processing, only a reference of a judicial nature can be deduced, such as your status as an injured party in a criminal proceeding; however, it is important to remember that judicial data must be kept separate from sensitive data in terms of classification and applicable provisions";
- "Regarding the position of the [complainant ...] he specifies the following: Following an application for civic access made by Mr. [...] in relation to a building police position, the same was only partially accepted; in the face of the review of said request

made before the ombudsman, the Entity was invited to immediately provide the ostension of all the documentation pertaining to the file. Specifically, the index of the documents contained in the police file, the documents contained in the police file amounting to 190 pages and the Copy of the Communication of 02.15.2021 addressed to the Ombudsman were made available at the time. Before delivering the aforementioned documentation, this body proceeded to obscure the personal data of the subjects, leaving the indication of the sender of the same. Only in two deeds was there an oversight, but limited to the identification data of the [complainant ...] and never to sensitive data. In this case, the failure to notify the large number of parties involved in the proceeding finds its justification in the principles of economy, efficiency and effectiveness of the administrative action. It is certainly not to be underestimated that the mailing of communications to the counterparties would have entailed an expense for the Authority. However, although these principles inspire the activity of the Public Administration, we cannot omit the consideration of the interest in the protection of the personal data of the interested parties. This right enjoys reinforced protection compared to other fundamental rights, as it obliges the public administration to assess preliminarily, for each proceeding, whether there is even the risk that the right may be harmed by the administrative action"

- "an inadequately weighted assessment of the rights of the counterparties, and the failure to respond to the request made pursuant to the ARTT. 15-22 GDPR then prompted the Entity to notify the Data Breach";
- "As regards the complaint [...], due consideration must be given to the factual circumstance that the number of subjects who were able to see said identity card is fortunately limited, since there were 7 parties involved in said proceedings and that these were all work colleagues [of the complainant], it therefore follows that such information, relating only to identification data and not also to particular categories of data, were already known to them";
- "Regarding the absence of the Rpd, it should be noted that the appointment of Dr. [...] took place with Trade Union Decree no. 12 of 25 May 2020 and the same was published on the Institutional website in the section of the Praetorian Register to highlight it to the community (Annex A). In the same decree it was specified that the contact details of the then Rpd could be found in the section of the site where the email address used was that of rpd@comune.cisterna.latina.it. As for the failure to notify the Guarantor, it should be noted that this body had failed in 2020 with the procedures set out on the Guarantor's website to find the access credentials, to complete the procedure for communicating changes to the DPO. This difficulty, it should be noted, was also encountered during the communication of the current Dpo since in the absence of a reply from the telephone contacts indicated on the site it was necessary to contact the Offices by telephone several times. Currently, the

"Privacy" section of the site page shows the contact details of the appointed DPO".

From what was declared and documented, therefore, it emerged that the Municipality communicated excess data of the complainants to interested third parties, did not respond to the exercise of rights and failed to appoint a new DPO for several months after the resignation of the first appointed DPO , in addition to not having correctly fulfilled the obligation to communicate the relevant contact details to the Authority, in violation of articles 5, 12 and 37 of the Regulation.

With a note dated 3 May 2022 (prot. n. 24354) the Office, on the basis of the elements acquired, notified the Municipality, pursuant to 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, inviting the aforesaid owner 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, of law no. 689 of 11/24/1981).

With the note mentioned above, the Office found that the Municipality: has implemented personal data processing in a manner that does not comply with the principle of "minimization" of data in following up on requests for access to documents; did not promptly respond to requests to exercise the rights by the interested parties; has committed violations of the obligations concerning the designation of the DPO and the communication to the Supervisory Authority of the related contact data - which also entail the obligation to update, from time to time, about the changes in the subjects that follow one another in the assignment.

With the note dated 27 May 2022 (prot. n. 27272), the Municipality sent the Guarantor its defensive writings in relation to the notified violations declaring, in particular:

- "as regards the disputed violations relating to the alleged violation of the principle of minimization, it should be noted that this violation in relation to [the second complainant] resulted in 7 of her work colleagues becoming aware of data that were certainly supernatural with respect to to the purposes, but already in the cognitive baggage of the counterparties themselves since they frequented [the complainant] every day having a relationship of colleague with the same";
- "as for the [first complainant], it is believed that said violation of the principle of minimization, where considered to exist, should in any case be considered of little relevance, since, in a set of documents of around 190 pages, only on two occasions was it not obscured the name and surname of the [complainant]";
- "Failure to communicate the data of the DPO: [...] as already indicated in the previous note of 1st April last, the [DPO] had

started the procedure for the communication of the contact details of the person appointed as DPO as per the attached documentation [...] and that from a saved screen it also seemed that the procedure had ended successfully (screenshot of 29 July 2020), but the Guarantor's messaging systems never sent the new DPO the communications necessary to complete the procedure" ;

- "from the attachments it can also be seen that the contact details provided during the various attempts put in place to complete the communication procedure to the Guarantor show exactly the address that was available on the site or rpd@comune.cisterna.latina.it; this in support of the fact that the [DPO] believed he had correctly carried out the procedure for communicating his data to the Authority, so much so that he had them published on the site to allow the interested parties to exercise their rights";
- "the violations that are contested against the Entity are all attributable to a negligent nature of the violation";
- "in relation to the violation alleged by the [first complainant] the failure to obscure the name [...] can only be attributed to an involuntary carelessness of the operator";
- "as regards the failure to redact the identity document of the [second complainant], there is undoubtedly a conduct that from a subjective point of view must be evaluated as negligent/negligent conduct by an operator who does not adequately carry out the acts";
- "where in the light of the attached documentation it is desired to recognize as integrated the hypothesis of the failure to communicate to the Guarantor Authority the references of the DPO officer [...] said violation must certainly be considered ascribable to negligent behaviour. In fact, it is at most possible to dispute that the persons in charge of completing the procedure did not take care to request the Guarantor Authority to send the communication necessary to complete the procedure, but they were well aware of the procedure to be implemented and had taken steps in this sense";
- "in relation to the [first complainant] the Entity itself, having become aware of the violation, proceeded to notify the data breach to the Guarantor, as regards the violation carried out against the [second complainant] as the effects were now consolidated once the counterparties entered in possession of the information deemed superfluous with respect to the purposes, the data controller deemed it appropriate to organize a training session held on 26 April in which the new appointed Dpo, the Executives and the POs took part. so that they can be constantly trained and updated on the legislation on privacy, with specific reference also to the rights of the interested parties and the methods of exercising them".

3. Outcome of the preliminary investigation

Pursuant to the regulations on the protection of personal data, the processing of personal data carried out by public subjects (such as the Municipality of Cisterna di Latina) 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" [art. 6, par. 1, lit. c) and e)].

Even in the presence of a condition of lawfulness, the data controller is, in any case, required to respect the principles on data protection pursuant to art. 5 of the Regulation.

3.1 The “minimization” principle

Pursuant to art. 5, par. 1, lit. c), of the Regulation, personal data must be "adequate, pertinent and limited to what is necessary with respect to the purposes for which they are processed".

As emerges from the documents, the communication to "third parties" of the personal data of the complainants in excess of the purposes pursued in the two separate procedures for requesting access to the documents was recognized by the Municipality itself, albeit due to an involuntary human error by the individual officials.

Therefore, the violation of art. 5, par. 1, lit. c) of the Regulation.

3.2 The exercise of the rights of the interested parties

The articles from 15 to 22 of the Regulation give the interested party the right to ask the data controller or (as in the case in question, the presumed data controller) access to personal data and the rectification or cancellation of the same or the limitation of treatment that concerns him or to oppose their treatment, as well as the right to data portability, if the conditions are met.

The art. 12, par. 3 of the Regulation establishes that the data controller must respond to the request of the interested party without unjustified delay and, in any case, at the latest within one month of receipt of the same. This deadline may be extended by two months, if necessary, taking into account the complexity and number of requests, it being understood that the interested party must be informed of this extension and of the reasons for the delay within one month of receipt of the request.

If the data controller does not comply with the interested party's request, the data controller must, in any case, 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 making a complaint to a supervisory authority and to lodge a judicial appeal (cons. 59

and art. 12, paragraph 4, of the Regulation).

During the investigation, it was also ascertained that there was no reply to the exercise of the rights of the interested parties (specifically, the right of access referred to in Article 15 of the Regulation), in violation of Article 12 of the same Regulation.

3.3 The Data Protection Officer (DPO)

With regard to the figure of the DPO, the legislation on data protection provides that the designation of the same is always due by a "public authority" or a "public body" (Article 37, paragraph 1, lett. a), of the Regulation).

In this regard, the documents show that the Municipality did not have a DPO in the period between the resignation of the first DPO in charge (April 2021) and the designation of the second DPO (January 2022), an aspect on which the Municipality did not provide any elements, in violation of the aforementioned art. 37, par. 1, lit. to).

As regards, on the other hand, the disputed failure to notify the Supervisory Authority of the contact details of the first appointed DPO (Article 37, paragraph 7 of the Regulation), having taken note of what was declared by this Municipality and a check carried out in the register of the Authority, it emerges that the DPO in charge had actually started the procedure to communicate his contact details to the Authority, failing to complete it completely. Considering that the communications of the subsequent DPOs have been duly concluded, the failure to complete the communication of the contact details of the first DPO is considered an excusable error, with consequent filing of the dispute of the violation of paragraph 7 of the art. 37 of the Regulation.

4. Conclusions

In the light of the assessments referred to above, it should be noted that the statements made by the data controller in the defense writings for the truthfulness of which one may be called upon to answer pursuant to art. 168 of the Code although worthy of consideration, do not allow the findings notified by the Office to be overcome with the act of initiation of the proceeding and are insufficient to allow the dismissal of the present proceeding, since none of the cases envisaged by the art. 11 of the Regulation of the Guarantor n. 1/2019.

From the checks carried out on the basis of the elements acquired, also through the documentation sent by the data controller, as well as from the subsequent evaluations, the non-compliance of the treatments carried out by the Municipality in the management of some document access requests was ascertained.

The data processing took place in violation of the principle of "minimization" pursuant to art. 5, par. 1, lit. c), of the Regulation,

as well as in violation of art. 12 of the Regulation for the failure to respond to interested parties who have presented a request to exercise their rights.

It was also ascertained that the Municipality had no DPO in the period between the resignation of the first DPO in charge (April 2021) and the designation of the second DPO (January 2022), in violation of art. 37, par. 1, lit. a), of the Regulation.

The preliminary assessments of the Office are therefore confirmed and the illegality of the processing of personal data carried out by the Municipality is noted, as it occurred in violation of articles 5, 12 and 37 of the Regulation.

The violation of the aforementioned provisions renders the administrative sanction applicable pursuant to articles 58, par. 2, lit. i), and 83, par. 4 and 5, of the same Regulation, as also referred to by art. 166, paragraph 3, of the Code.

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 College [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, taking into account the art. 83, par. 3 of the Regulation, in the specific case the violation of the aforementioned provisions is subject to the application of the same pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation.

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 Regulation.

For the purposes of applying the sanction, it was considered that the processing took place in violation of the principle of "minimization" pursuant to art. 5, par. 1, lit. c) of the Regulation, in the absence of feedback on the exercise of the rights of the interested parties and in the absence of the appointment of DPO for several months.

This violation was brought to the attention of the Authority through two complaints.

On the other hand, we highlight the non-malicious behavior of the violation and the absence of previous violations against the

Municipality, the degree of cooperation with the Guarantor, as well as the adoption of some measures aimed at preventing the repetition of similar episodes in the future.

Based on the aforementioned elements, evaluated as a whole, it is deemed necessary to determine pursuant to art. 83, par. 2 and 3, of the Regulation, the amount of the pecuniary sanction, provided for by art. 83, par. 5, letter. a) of the Regulations, in the amount of Euro 5,000.00 (five thousand/00) for the violation of articles 5, 12 and 37 of the Regulation as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same Regulation.

Taking into account that part of the violations relates to compliance with the principles that govern the regulation on the protection of personal data and the rights of the interested parties, it is believed that the ancillary sanction of publication on the website of the Guarantor of this provision should be applied, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Regulation of the Guarantor n. 1/2019.

Finally, it is believed that the conditions set forth in art. 17 of Regulation no. 1/2019.

ALL THIS CONSIDERING THE GUARANTOR

pursuant to art. 57, par. 1, lit. a) and f) of the Regulation, notes the illegality of the processing carried out by the Municipality of Cisterna di Latina, for the violation of the articles 5, 12 and 37 of the Regulation, in the terms referred to in the justification

ORDER

to the Municipality of Cisterna di Latina in the person of its pro-tempore legal representative, with registered office in Via Zanella 2, 04012 Cisterna di Latina (LT), Tax Code 80003790591, to pay the sum of Euro 5,000.00 (five thousand/00) as of pecuniary administrative sanction for the violations of the articles 5, 12, and 37 of the Regulation, 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 fine imposed;

ENJOYS

to the Municipality of Cisterna di Latina to pay the sum of Euro 5,000.00 (five thousand/00) in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, according to the methods indicated in the attachment, within thirty 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

the publication of this provision on the Guarantor's website, pursuant to art. 166, paragraph 7, of the Code and of the art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019;

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lit. u), of the Regulation, of the violations and of the measures adopted in accordance with art. 58, par. 2, of the Regulation.

Pursuant to art. 78 of the Regulation, 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, 10 November 2022

PRESIDENT

Station

THE SPEAKER

Cerrina Feroni

THE SECRETARY GENERAL

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