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Injunction order against the Lagonegro Bar Association - April 15, 2021

Record of measures

n. 146 of April 15, 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 the cons. Fabio Mattei, 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 / EC, "General Data Protection Regulation" (hereinafter "RGPD");

GIVEN the d. lgs. June 30, 2003, n. 196 containing the "Code regarding the protection of personal data (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, doc. web n. 9107633 (hereinafter "Regulation of the Guarantor no. 1/2019");

GIVEN the documentation in the deeds;

GIVEN the observations made by the Secretary General pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and operation of the office of the Guarantor for the protection of personal data, in www.gpdp.it, doc. web n. 1098801;

Speaker Dr. Agostino Ghiglia;

WHEREAS

1. The complaint

This Authority has received a complaint regarding the publication on the institutional website of the Lagonegro Bar Association of the contents of a pec sent by the complainants to the Bar Council and to individual councilors. With the pec, in particular, the complainants asked the Council to include some items on the agenda of the subsequent board meeting and expressed some

personal considerations in relation to the alleged incompatibility of a colleague to cover roles within the Council and the opportunity to confer certain tasks on the same as well as with regard to the successful re-nomination of the President and the methods of management of the Order by the latter. The complainants also stated that, despite having requested the "immediate removal" of the aforementioned pec from the website, this document has not been removed.

2. The preliminary activity.

With a note of the XX, the President of the Council of the Bar Association of Lagonegro, has provided feedback to the note of the XX (prot.n.XX) with which the Department has provided information on the legislation on the protection of personal data applicable to the present case and invited the Order to provide feedback to the request for removal of the aforementioned pec, formulated by the complainants.

Specifically, the President of the Order, with a declaration of the truthfulness of which is criminally liable pursuant to art. 168 of the Code clarified that:

- "in the session of 8 January 2020, the Council of the Bar, decided to order the removal from the website of the Lagonegro Bar Association, according to art. 15-22 of the Regulation (...) of the note dated XX forwarded by the pec address of Avv. XX and addressed to the Council of the Order and to the individual Councilors ";
- "the Bar Council adopted this decision for the sole purpose of not exasperating the terms of the question and while vigorously challenging the validity of the reasons set out in the complaint.

In any case, and insofar as it may be necessary, it should be noted that the note in question (which is not signed, not even digitally) did not contain "personal data" of the complainants and concerned relations of an institutional nature ".

3. Applicable law.

Pursuant to the provisions of the European Regulation, which became applicable from 25 May 2018, "personal data" means "any information concerning an identified or identifiable natural person ("interested party")". Furthermore, "the natural person is considered identifiable who can be identified, directly or indirectly, with particular reference to an identifier such as the name, an identification number, location data, an online identifier or to one or more characteristic elements of his physical, physiological, genetic, psychological, economic, cultural or social identity "(art. 4, par. 1, n. 1, of the Regulations).

The processing of personal data carried out by public entities (such as the professional order) is lawful, only if such processing is necessary "to fulfill a legal obligation to which the data controller is subject" or "for the performance of a task of public

interest or related to the exercise of public authority vested in the data controller "(art. 6, par. 1, lett. c) and e)).

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 (such as publication on the Internet) in the public sphere is permitted only when required by a law or, in the cases provided for by law, by regulation.

In any case, 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 this context, it should be noted that, in this case, the lawfulness of the disclosure of the applicants' personal data contained in private correspondence sent by certified e-mail must be assessed, as well as in light of the principles on the protection of personal data, taking into account the overall regulatory framework set up to protect the freedom and secrecy of correspondence and "any other form of communication" (Article 15 of the Constitution).

Finally, it should be noted that the Regulation, by providing, in Articles 12 et seq, regarding the "rights of the interested party", provides that the latter can obtain from the data controller access to personal data and specific information on the processing of data referred to them, the correction or cancellation of the same or the limitation of the treatment that concerns him, the right to data portability and that he can oppose their treatment (articles 15 et seq. and Recital 63). This unless one of the cases of limitation of the rights of the data subject strictly indicated in art. 23 of the Regulation and 2-undecies of the Code, which are not conferring with respect to the case in question.

4. Preliminary assessments of the Office on the processing of personal data carried out.

From the assessment made on the basis of the elements acquired and the facts that emerged as a result of the investigation, as well as subsequent assessments, the Office ascertained that the complainants, in submitting the request for "removal" from the website of the Order of the recalled Pec, even in the absence, in the request, of explicit references to the legislation on the

protection of personal data, have intended to exercise the rights provided for by the aforementioned art. 15-22 of the Regulations and that the Lagonegro Bar Association provided a response to the aforementioned request after the thirty-day deadline provided for by the Regulations and only following the invitation formulated by the Office, in violation of art. 12, par. 3, of the Regulation.

Furthermore, the professional association did not inform the interested parties, within one month of receipt of the request, of the reasons for the non-compliance and of the possibility to lodge a complaint with a supervisory authority and to propose judicial appeal, in violation of the 'art. 12, par. 4, of the Regulation.

From the verification carried out it also appears that the Order, by publishing on the institutional website, the Pec sent by the complainants to the Council of the Order and to the individual councilors, determined the dissemination of the personal data of the complainants in the absence of a suitable legal basis, to the pursuant to art. 2-ter, paragraphs 1 and 3 of the Code, and art. 6 par. 1, lett. c) and e), of the Regulation, which instead admits the aforementioned possibility, by public entities, only when the dissemination is provided for by a law or, in the cases provided for by law, by regulation.

The dissemination of personal data took place, therefore, in violation of art. 2-ter, paragraphs 1 and 3, of the Code and art. 6, par. 1, lett. c) and e) of the Regulation and in a manner that does not comply with the principle of "lawfulness, correctness and transparency" of the processing, in violation of art. 5, par. 1, lett. a), of the Regulation.

In this way, notification of the violations carried out, provided for by art. 166, paragraph 5, of the Code, to the Bar Association of Lagonegro, communicating the start of the procedure for the adoption of the measures referred to in Article 58, paragraph 2, of the Regulations and inviting the aforementioned Order to send written writings to the Guarantor defense or documents and, possibly, to ask to be heard by the Authority, within the term of 30 days (Article 166, paragraphs 6 and 7, of the Code; as well as Article 18, paragraph 1, of the law n. / 11/1981).

5. Outcome of the investigation relating to the complaint presented.

With a note dated the XXth, the professional Order sent its defense writings to the Guarantor in relation to the notified violations, highlighting in particular that "the decision to publish the" pec "on the Order's website was adopted for the sole purpose of allowing all Members to examine the topic in question (establishment of a "social security counter") and provide any suggestions; the interested parties involved were eleven (equal to the number of members of the Council of the Order of Lagonegro), namely the three claimants (also members of the Council of the Order) and the eight recipients of the "pec" (who

had decided to make it publish on the website); no other interested parties are involved. (...) "as reported by the complainants themselves," the pec note in question ... necessarily ascribes to the institutional activity "(so much so that it was also sent to the certified e-mail address of the Order of Lagonegro) and the its publication can be intended to safeguard the freedom of expression and thought (...); moreover, the only personal data obtainable from the "pec note" in question is the certified e-mail address of the members of the Council of the Order (available to all by simply accessing the on-line Register).

These elements, although worthy of consideration, do not, however, allow us to overcome the findings notified by the Office with the note of the XX (prot.no.XX) and are not sufficient to allow the filing of this proceeding, however, none of the cases occur. provided for by art. 11 of the Guarantor Regulation n. 1/2019.

The complaint in question concerns the publication on the institutional website of the Bar Association of Lagonegro, of the contents of a Pec, sent by the complainants to the e-mail address of the Council of the Bar and of the individual directors, with which requested the Board to include some items on the agenda of the next Board meeting. The Pec also contained certain personal considerations of the complainants in relation to the alleged position of incompatibility of a colleague to hold roles in the Board and the opportunity to confer a specific position on the same as well as certain assessments of the same in relation to the successful re-nomination. of the President and the methods of management of the Order by the latter.

Recalling that "personal data" means "any information concerning an identified or identifiable natural person (" interested ") " (see Article 4, point 1 of the Regulations), it should be noted that, contrary to what is claimed by the Order, according to which "the note in question (...) did not contain" personal data "of the complainants and concerned relations of an institutional nature" the described processing operation gave rise to a processing of personal data, however not limited, as evidenced by the Order only the certified e-mail addresses of the members of the Council of the Order "available to all by simply accessing the on-line Register".

The e-mail sent by the complainants, as is evident from the content of this and from the topics dealt with, despite having as its subject matters relating to the activity of the Council of the Order, addresses issues concerning the specific relationships between the complainants and certain institutional offices. within the Board and reports reflections and critical evaluations of the authors as well as evaluations regarding the attitudes held by the President during the advising mandate. The decision to send the e-mail to all the directors does not appear to affect the qualification of the content of the communication itself, which is configured, in any case, as private correspondence, certainly not intended, in the intention of the senders, for dissemination.

It is also noted that, in the present case, the lawfulness of the disclosure of the personal data of the complainants contained in private correspondence sent by certified e-mail must be assessed, as well as in light of the principles on the protection of personal data, taking into account the overall regulatory framework set up to protect the freedom and secrecy of correspondence and "any other form of communication" (Article 15 of the Constitution).

In this regard, it should be noted that the Guarantor, with the provision containing the "Guidelines of the Guarantor for e-mail and Internet" (adopted by the Authority on 1 March 2007 and published in the Official Gazette no. 58 of 10 March 2007), held that " the content of the e-mail messages - as well as the external data of the communications and the attached files - concern forms of correspondence supported by guarantees of secrecy also constitutionally protected, whose rationale lies in protecting the essential core of human dignity and the full development of personality in social training "(see in part. point 5.2 letter b) and that this, also transposed into the work activity performed by the directors, entails the possibility that the latter can boast a legitimate expectation of confidentiality on certain forms of communication; (see, most recently, Provision 4.12.2019, n.216, web doc. 9215890; see also, on this point, Provision 5.3.2015, n. 136, web doc. 3985524).

Lastly, it is noted that the publication of the correspondence sent by certified e-mail by the complainants to the e-mail address of the Council of the Order and the remaining Directors is not necessary "to fulfill a legal obligation to which the holder of the processing "or" for the performance of a task of public interest or connected to the exercise of public authority vested in the data controller "(Article 6, paragraph 1, letter c) and e), of the Regulation);

In this context, the assertion of the Bar Council according to which the decision to publish the Pec on the website would have been adopted "for the sole purpose of allowing all Members to examine the topic in question (institution of a "social security counter") and provide any suggestions "as this purpose can be pursued, in accordance with the provisions in force, with less invasive tools for the right to privacy of the interested parties.

The preliminary assessments of the Office are therefore confirmed and the unlawfulness of the processing of personal data carried out by the Bar Association is noted for having disseminated, through the publication of the contents of the Pec sent by the complainants to the Council of the Bar and to individual directors, personal information relating to data subjects, in the absence of a suitable legal basis.

The publication in question therefore occurred in violation of the legislation for the protection of personal data and, specifically:

a) in violation of the principles of "lawfulness, correctness and transparency" and pursuant to art. 5, par. 1, lett. a) of the Regulations;

b) in the absence of a legal prerequisite for the publication of the content of the certified e-mail and the personal data contained therein in violation of art. 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the Regulations and art. 2-ter, paragraphs 1 and 3, of the Code;

c) in violation of art. 12, paragraphs 3 and 4 of the Regulations.

In this context, considering, in any case, that the conduct has exhausted its effects, given that the data controller has removed the document from the school website, a circumstance verified by the Office, the conditions for adoption do not exist. of measures, of a prescriptive or inhibitory nature, pursuant to art. 58, par. 2, of the Regulation.

6. Adoption of the injunction order for the application of the pecuniary administrative sanction (Articles 58, paragraph 2, letter i; 83 RGPD).

The Lagonegro Bar Association therefore appears to have violated Articles 5, par. 1, lett. a) and 6, par. 1, lett. c) and e), par. 2 and par. 3 lett. b), and 12, paragraphs 3 and 4 of the Regulations, as well as art. 2-ter paragraphs 1 and 3 of the Code.

In this regard, art. 83, par. 3, of the Regulation, provides that "If, in relation to the same treatment or related treatments, a data controller or a data processor violates various provisions of this regulation, with willful misconduct or negligence, the total amount of the pecuniary administrative sanction does not exceeds the amount specified for the most serious violation ".

In the present case, the violation of the aforementioned provisions is subject to the same administrative fine as provided for by art. 83, par. 5, of the Regulation, which therefore applies to the present case.

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 corrective power to "inflict 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 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).

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 should be considered that the detected conduct, held in violation of the regulations on the protection of personal data, concerned personal data whose disclosure is not necessary in order to pursue the public interests pursued by the professional order. This dissemination lasted for about eleven months and ceased only following the intervention of the Guarantor and concerned the content of correspondence which also implies profiles of violation of rights that go beyond the protection of personal data.

However, it is necessary to take into account the negligent nature and the slight extent of the violation, as the professional association carried out the aforementioned processing operation, mistakenly believing that the personal data processed only concerned the e-mail address of the lawyers, already disseminated through inclusion in the online professional register. The Entity collaborated with the Authority during the investigation of this proceeding and took action to remove the personal data of the interested parties as soon as it received the request from the Guarantor and there are no previous relevant violations committed by the aforementioned Order or previous measures referred to to art. 58 of the Regulation.

Due to the aforementioned elements, assessed as a whole, it is deemed necessary to determine pursuant to art. 83, par. 2, of the Regulations, the amount of the pecuniary sanction, provided for by art. 83, par. 5, lett. a) of the Regulations, to the extent of € 3,000.00 (three thousand) for the violation of Articles 5, par. 1, lett. a) and 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b) and 12, paragraphs 3 and 4 of the Regulations, as well as art. 2-ter paragraphs 1 and 3 of the Code, as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same Regulation.

In relation to the specific circumstances of this case, it is 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 believed that the conditions set out in art. 17 of the Guarantor Regulation n. 1/2019.

WHEREAS, THE GUARANTOR

detected the unlawfulness of the processing carried out by the Lagonegro Bar Association in the terms indicated in the motivation pursuant to Articles 58, par. 2, lett. i) and 83 of the Regulations, as well as 166 of the Code;

ORDER

To the Lagonegro Bar Association, in the person of the pro-tempore legal representative, with registered office in Via Napoli, Snc - 85042 Lagonegro (PZ) - Tax Code 91000010768 to pay the sum of € 3,000.00 (three thousand) as a pecuniary

administrative sanction for the violations referred to in the motivation; 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 same Council of the Bar to pay the sum of € 3,000.00 (three 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 l. n. 689/1981.

Please note that the offender has the right to settle the dispute by paying - again in the manner indicated in the annex - of an amount equal to half of the sanction imposed, within the term referred to in art. 10, paragraph 3, of d. lgs. n. 150 of 1/9/2011 provided for the submission of the appeal as indicated below (Article 166, paragraph 8, of the Code).

HAS

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

- the annotation in the internal register of the Authority pursuant to art. 17 of the Guarantor Regulation n. 1/2019.

Pursuant to art. 78 of the Regulation, of art. 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, April 15, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei