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Injunction against the State Art School of Naples - 6 February 2020

Register of measures

no. 27 of 6 February 2020

GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data (hereinafter "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 4/4/2019, published in the Official Gazette no. 106 of 8/5/2019 and in www.gpdp.it, doc. web no. 9107633 (hereinafter "Regulation of the Guarantor n. 1/2019");

Given the documentation in the deeds;

Given the observations made by the Secretary General pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the Guarantor's office for the protection of personal data, doc. web no. 1098801;

Speaker Dr. Giovanna Bianchi Clerici;

WHEREAS

1. Introduction

This Authority has received a complaint from Mr. XX in relation to the publication, on the institutional website of the Liceo Artistico Statale of Naples, of an old Institute ranking relating to teaching staff containing, in addition to one's home telephone number, the mobile phone number and the tax code of the wife, personal information relating to about 1,000 teachers (tax

code, telephone numbers, residential addresses and e-mail addresses).

2. The preliminary investigation

From the preliminary investigation carried out by the Office on 15 November 2018, it emerged that the aforementioned ranking, containing the names of around 1500 teachers, was visible and freely downloadable from the institutional website of the aforementioned Institute at the url: https://.. ..-

As part of the assessment carried out, the Office found that in these rankings, provided for by art. 5, paragraph 9, Decree of the Minister of Education June 13, 2007, n. 131 (Regulation for the assignment of substitute teaching and educational staff pursuant to article 4 of the law of 3 May 1999, n. 124) and by art. 32, the. 18 June 2009, no. 69, in addition to the personal data indicated by the complainant, further information of a personal nature was contained relating to the teachers, not necessary with respect to the purpose of the publication.

The Office also found that, in the fields called "Pref. 1" "Pref. 2" "Pref. 3" "Pref. 4" some alphabetic abbreviations were reported, including the letter "S". This letter, according to what is reported in Annex 6 (preference codes) of the Decree of the Ministry of Education, University and Research of 1 April 2014, n. 235 (Update of the rankings once the teaching and educational staff are exhausted, valid for the three-year school years 2014/15, 2015/16 and 2016/17), as well as in the application models relating to inclusion in the club and school rankings for the same three-year school year, attached to the D.M. 22 May 2014, no. 353 (see also art. 5, paragraph 4 of Presidential Decree 9 May 1994 n. 487), identifies the category of "invalid and maimed civilians". There were about 25 interested parties for whom the presence of the initials "S" was identified.

In this regard, the Liceo Artistico responded to the request for information from this Authority (note prot. n. XX of the XX) with the note prot. no. XX of the XX.

Specifically, in response to this Department's request for information, it was represented, among other things, that:

- "the (…) school structure immediately proceeded to eliminate the file of the rankings object of your report, (…) and at the same time proceeded to request the removal of the obsolete page from the cache of the Google search engine (…)."
- "Furthermore, all the additional checks necessary to support with absolute certainty that they had deleted the file containing data that was not suitably verified from the server of the institutional site were carried out".

The Office, on the basis of the checks carried out and the elements acquired, also through the documentation sent by the school, and the facts that emerged following the preliminary investigation, as well as the subsequent evaluations, has

ascertained that the High School, by publishing on the website institutional, at the url: https://..., the Institute rankings relating to teachers, bearing in clear text, in addition to the identification data of the interested parties, also personal information that is not necessary with respect to the purposes pursued with the publication, such as tax code, address of residence, landline and mobile telephone number, e-mail address, number of children, preference codes, as well as data relating to the health of certain teachers, has caused an undue dissemination of personal data.

Therefore, we proceeded with the notification of the violations carried out, pursuant to art. 166, paragraph 5, of the Code, to the school, communicating the start of the procedure for the adoption of the measures referred to in article 58, paragraph 2, of the Regulation and inviting the aforementioned high school to send the Guarantor defensive writings or documents and, possibly, to ask to be heard by the Authority, within 30 days (article 166, paragraphs 6 and 7, of the Code; as well as article 18, paragraph 1, of law no. 689 of 11/24/ 1981).

In particular, the Office considered that the publication of the aforementioned rankings occurred in violation of the legislation on the protection of personal data, leading to the processing of personal data:

a) not compliant with the principles of "lawfulness, correctness and transparency" and "data minimization", in violation of art. 5, par. 1, lit. a) and c), of the Regulation;

b) in the absence of a regulatory prerequisite for the publication of certain personal data such as tax code, residential address, landline and mobile telephone number, e-mail address, number of children, preference codes, data relating to the health of the interested parties, in violation of the art. 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the Regulation and of the art. 2-ter, paragraphs 1 and 3, of the Code;

c) in violation of the ban on the dissemination of data relating to health (article 9, paragraphs 1, 2, 4, of the Regulation referred to in article 2-septies, paragraph 8, of the Code).

With a note of the XX (prot. n. XX) the Liceo Artistico sent its own defense briefs, and declared, in particular, that:

a) the error is due to a mere exchange of files during the publication phase. In fact, it is customary to acquire the rankings in privacy format, i.e. already purified of particular data and in complete format, i.e. complete with particular data. During the publication phase, the administrative assistant then uploaded the incorrect file to the website, exchanging the two files in the save phase".

b) "The Data Controller has immediately given the procedure to be implemented for the publication of the files on the

institutional website and on the transparency platform". "(…) organized staff training courses in collaboration with the DPO".

3. Outcome of the investigation relating to the complaint presented. Applicable legislation

As a preliminary point, it should be noted that, although the violation of personal data subject to the investigation by this Authority began before the date of full application of the Regulation, in order to determine the applicable regulatory framework in terms of time, the principle must be recalled of legality pursuant to art. 1, paragraph 2, of the law n. 689 of 24 November 1981 which, in providing that "The laws which provide for administrative sanctions are applied only in the cases and within the times considered in them", establishes the recurrence of the principle of the tempus regit actum. The application of this principle therefore determines the obligation to take into consideration the provisions in force at the time of the violation committed. In the case in question, considering the permanent nature of the disputed conduct, for the purpose of correctly identifying the disciplinary framework, the moment of cessation of the unlawful conduct is relevant, which from the preliminary investigation documents, as mentioned, appears to have lasted at least until the verification carried out by the Office on 23 November 2018, i.e. after 25 May 2018 in which the Regulation became applicable. In this context, the assessment regarding the lawfulness of the processing of personal data put in place remains unaffected.

Pursuant to the relevant legislation, "personal data" is "any information relating to an identified or identifiable natural person ("data subject")" (art. 4, paragraph 1, no. 1, of the Regulation). Furthermore, "an identifiable natural person is one who can be identified, directly or indirectly, with particular reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more characteristic elements of his physical, physiological, genetic, psychic, economic, cultural or social identity" (ibidem).

The processing of personal data carried out in the public sphere 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 in the public interest or connected to the exercise of public powers vested in the data controller" (Article 6, paragraph 1, letters c) and e)).

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 treatment, in accordance with paragraph 1, letters c) and e), by determining more precisely 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 the art. 2-ter of the Code, according to which the operation of dissemination of personal data (such as publication on the Internet) in the public sphere is

permitted only when provided for by a law or, in the cases provided for by law, by regulation.

In this framework, the processing of personal data must take place in compliance with the principles indicated in the 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 in relation to the interested party" as well as "adequate, pertinent and limited to what is necessary with respect to the purposes for which they are processed" (par. 1, letter a) and c).

In any case, the dissemination of data relating to health is absolutely prohibited (article 9, paragraphs 1, 2 and 4, of the Regulation, article 2-septies, paragraph 8, of the Code), i.e. "personal data pertaining to the physical or mental health of a natural person, including the provision of health care services, which reveal information relating to his state of health" (Article 4, paragraph 1, no. 15; recital no. 35, of the Regulation) .

Furthermore, the Guarantor, in provision no. 243 of 15 May 2014 (web doc. n. 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 entities obliged" with reference to the publicity of the results of the competition tests and the final rankings, however, 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 to landline or mobile telephone users, the residential or e-mail address, the tax code, the ISEE indicator, the number of disabled children, the results of psycho-aptitude tests or educational qualifications), nor those concerning the conditions of health of the data subjects (see Article 22, paragraph 8, of the Code), including references to conditions of invalidity, disability or physical handicap and/or psychic" (cf. second part par. 3.b.).

Even the Ministry of Education, with a circular dated March 7, 2008, referred to in the circular dated January 22, 2013, clarified that "it is not permitted to publish, alongside the data strictly necessary for identifying the candidate (name, surname, score, and position in the ranking) of further data, such as, for example, domicile, telephone number since the knowledge of third parties of the data in question is not strictly necessary to achieve the institutional purposes underlying the publication of the ranking, nor are there specific rules in the legal system which allow for the publication of common data other than those required".

4. Conclusions

In the light of the assessments referred to above, taking into account the statements made by the data controller during the preliminary investigation the truthfulness of which may be called upon to answer pursuant to art. 168 of the Code and considering that, with reference to the present case, the defense briefs produced by the Institute did not produce elements such as to determine the closure of the proceeding, the preliminary assessments of the Office are confirmed, and the unlawfulness of the processing of personal data carried out by the Artistic High School, for having disseminated, through publication on the institutional website, at the url: https://..., the Institute rankings relating to teachers (about 1500), bearing in clear text, in addition to the identification data of the interested parties, including personal data that is not necessary with respect to the purposes pursued with the publication of the ranking, concerning the complainant and all the teachers included in the aforementioned rankings, (tax code, residential address, fixed and mobile telephone number, address and -mail, number of children, preference codes) resulting in an undue dissemination of personal data (see with regard to the publication of irrelevant data contained in school rankings, Provv. 6 June 2013, no. 275, doc. web no. 2536184, 2536409 and 2535862).

It is also ascertained that the same rankings contained data relating to the health of about 25 teachers. Contrary to what the Institute claims, in fact, the indication of the letter "S" next to the names of the interested parties provides information relating to the state of health of the same, even through the consultation of annex 6 to the MIUR decree of 1 April 2014, no. 235, and/or the application models relating to inclusion in the club and school rankings, attached to the D.M. 22 May 2014, no. 353, in violation of the general ban on the dissemination of health data (art. 2-septies of the Code; art. 9 of the Regulation; see, in particular, the consolidated orientation of the Guarantor, even with regard to the previous regulatory framework, Provision n. 35 dated 4 February 2016, web doc. n. 4727305 and 4912481; Provision n. 244 dated 1 June 2016, web doc. n. 5260571, and the provisions cited therein).

The aforementioned dissemination of data lasted at least until the verification carried out by the Office, on 15 November 2018, i.e. after the date of 25 May 2018 on which the Regulation became applicable.

This publication took place in violation of the legislation on the protection of personal data and, specifically:

a) in violation of the principles of "lawfulness, correctness and transparency" and "minimization of data", pursuant to art. 5, par. 1," (par. 1, letters a) and c) of the Regulation;

b) In the absence of a regulatory prerequisite for the publication of certain personal data such as tax code, address, landline and mobile telephone number, e-mail address, number of children, preference codes, in violation of art. 6, par. 1, lit. c) and e),

par. 2 and par. 3, letter. b), of the Regulation and 2-ter, paragraphs 1 and 3, of the Code;

c) in violation of the ban on the dissemination of data relating to health (art. 9, par. 1, 2, 4, of the Regulation and art. 2-septies, paragraph 8, of the Code).

In this context, considering, in any case, that the conduct has exhausted its effects, given that the school has declared that it has taken steps to remove the ranking from the school website (see note of the XX), a circumstance verified by the Office, the conditions 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 (articles 58, paragraph 2, letter i; 83 of the Regulation)

The violation of the articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b); 9, par. 1, 2, 4, of the Regulation; articles 2-ter paragraphs 1 and 3 and 2-septies, paragraph 8, of the Code is subject to the application of the administrative fine pursuant to art. 83, par. 5, letter. a) of the Regulation.

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 corrective 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, depending on the circumstances of each individual case" and, in this framework, "the Board [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in full 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 application of paragraph 3 of the art. 83 of the Regulation, according to which, if, in relation to the same treatment or related treatments, a data controller violates, with willful misconduct or negligence, various provisions of the Regulation, the total amount of the pecuniary administrative sanction does not exceed the specified amount for the most serious violation (referred to in Article 83, paragraph 5, of the Regulation), the aforementioned violations having as their object, among others, the dissemination of health data pursuant to Article 2-septies, paragraph 8 of the Code, are to be traced back, pursuant to art. 83, par. 3 of the same Regulation and of the art. 166, paragraph 2 of the Code, in the context of the sanction envisaged for the aforementioned violation with consequent application of the sanction envisaged in art. 83, par. 5, of the Regulation.

The aforementioned pecuniary administrative sanction imposed, depending on the circumstances of each individual case, must also be determined in the amount taking into due 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, carried out in violation of the regulations on the protection of personal data, had as its object the dissemination of unnecessary personal data with respect to the purposes underlying the publication of the rankings (tax code, address , landline and mobile phone number, e-mail address, number of children, preference codes), referring to a large number of subjects (more than 1500); of the data relating to the health of about 25 subjects, identified in the ranking through the annotation, next to the names concerned, of the letter "S" as a title of preference indicating the category of "invalid and maimed civilians", pursuant to the MIUR Decree 1st April 2014, no. 235, annex 6, relating to the "preference codes", which can also be found in the application models relating to inclusion in the club and school rankings, attached to the Ministerial Decree 22 May 2014, no. 353. This diffusion of personal data lasted for a considerable period of time (a few years).

The violations derive from the publication of rankings relating to teaching staff on the school's institutional website; in relation to forms of diffusion similar to those in question, in the past, the Guarantor had adopted the aforementioned "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for purposes of publicity and transparency on the web by public subjects and other obliged bodies" with which he had given a series of indications to public subjects to comply with the provisions on data protection when they disseminate personal data on the web.

On the other hand, the following were considered: the culpable nature of the conduct since the publication is to be attributed to a mere clerical error; that the Institute took action to remove the personal data of the interested parties as soon as it received the request for information and therefore collaborated with the Authority during the investigation of the present proceeding in order to remedy the violation and mitigate its possible negative effects ; that the Lyceum has initiated a series of actions aimed at implementing the technical and organizational measures. Furthermore, there are no previous violations of the relevant Regulations committed by the Liceo Artistico.

Based on the aforementioned elements, evaluated as a whole, also taking into account the phase of first application of the sanctioning provisions pursuant to art. 22, paragraph 13, of Legislative Decree lgs. 10/08/2018, no. 101, it is deemed necessary to determine pursuant to art. 83, par. 2, of the Regulation, the amount of the pecuniary sanction, provided for by art. 83, par. 5, letter. a) of the Regulation, to the extent of 4,000.00 (four thousand) euros for the violation of articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b) of the Regulation; 9, par. 1, 2, 4, of the Regulation, articles 2-ter paragraphs 1 and 3 and 2-septies, paragraph 8, 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 the present case, it is also believed, also in consideration of the high number of interested parties involved; the type of data being unlawfully disclosed; of the time elapsed from the moment of publication until the removal of the ranking from the website of the aforementioned High School, that the accessory sanction of publication of this provision on the website of the Guarantor 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 should be noted that the conditions pursuant to art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

ALL THIS CONSIDERING THE GUARANTOR

declares the illegality of the processing of personal data carried out by the Liceo Artistico Statale, for the violation of the articles 5, par. 1, lit. a) and c); 6, par. 1, c) and e), par. 2 and par. 3, letter. b); art. 9, par. 1, 2, 4, of the Regulation; articles 2-ter paragraphs 1 and 3 and 2-septies, paragraph 8, of the Code, in the terms set out in the justification;

ORDER

at the State Artistic High School of Naples, with registered office in di Largo Santi Apostoli, n. 8/A - 80138 Naples (NA) – Fiscal Code 80020240638, in the person of the pro-tempore legal representative, to pay the sum of 4,000.00 (four thousand) euros as an administrative fine 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 the term of thirty days, an amount equal to half of the fine imposed;

ENJOYS

to the same Institute, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of 4,000.00 (four thousand) euros, according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive deeds 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 Guarantor's website and believes that the conditions pursuant to art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

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, 6 February 2020

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

Busia