

Injunction against Istituto Comprensivo Paolo Stefanelli - 31 January 2019

Register of measures

no. 31 of 31 January 2019

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

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

NOTING that the Office of the Guarantor for the protection of personal data (hereinafter the Guarantor), with note no. 13632 of 10 May 2018, found that the Istituto Comprensivo Paolo Stefanelli C.Fisc.: 97713220586, with headquarters in Rome, via Pestalozzi n. 5, in the person of its pro tempore legal representative, has disclosed on its institutional website, from the link <http://www.paolostefanelli.it/wp-content/uploads/2015/07GRAD-medie>, personal data capable of revealing the status of health of the interested parties and information contained in the list of teachers' institute rankings, making them also findable by typing the telephone number of any teacher on the Google search engine. This is because in the rankings that are visible and freely downloadable from the aforementioned url: <http://www.paolostefanelli.it/wp-content/uploads/2015/07GRAD-medie>, there are some alphabetic abbreviations including the letter "S" which, as indicated in Annex 6 (preference codes) of the Decree of the Ministry of Education, University and Research of 1 April 2014, n. 235, identifies the category of "invalid and maimed civilians", allows you to qualify a data suitable for revealing the state of health of the subjects identified in the aforementioned list for which the Code provides for specific protection (art. 4, c.1, lett d) of the Code) prohibiting its dissemination pursuant to art. 22, ch. 8, of the legislative decree 30 June 2003, no. 196 laying down the Personal Data Protection Code (hereinafter referred to as the Code);

CONSIDERING the report n. 17160/121433 of 6 June 2018 with which the Istituto Comprensivo Paolo Stefanelli, in the person of its pro-tempore legal representative, was charged with the administrative violation envisaged by art. 162, paragraph 2-bis, of the Code, in relation to art. 22, paragraph 8, regarding the dissemination of sensitive data of the interested parties, informing them of the right to make the payment in a reduced amount pursuant to art. 16 of the law n. 689/1981;

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

HAVING REGARD TO the report of the hearing of the party drawn up on 18 September 2018, pursuant to art. 18 of the law n. 689/1981, in which the Istituto Comprensivo Paolo Stefanelli highlighted how "(...) the facts that are the subject of the dispute (...) occurred in a particular period, in which the institute itself was temporarily without a school manager (...). Furthermore, the migration of the information systems took place subsequently, with the transition from the .it domain to the .gov domain; the takeover of this operation led to believe that the documents present on the old domain had all been canceled in the transition from one system to another, which, however, did not happen";

WHEREAS, as a result of the combined provisions of Articles 166, paragraph 7 of the Code (as amended by Legislative Decree no. 101/2018) and 1 of law no. 689/1981, both the preceptive rule and the sanctioning rule in force at the moment in which the administrative offense object of the dispute was committed in implementation of the principle of tempus regit actum must be applied to the case in question;

NOTING, therefore, that the Paolo Stefanelli Comprehensive Institute has disclosed, from the link <http://www.paolostefanelli.it/wp-content/uploads/2015/07GRAD-medie> of its institutional website, personal data capable of revealing the status of health of the interested parties and information contained in the list of teachers' rankings, in violation of art. 22, paragraph 8 of the Code, communicating, subsequently on 20 February 2018, the occurred cessation of the disputed conduct;

CONSIDERING the art. 162, paragraph 2-bis, of the Code, which punishes the violation of the provisions indicated in art. 167 of the Code, including the one referred to in art. 22, paragraph 8, of the same Code, with the administrative sanction of the payment of a sum from ten thousand euros to one hundred and twenty thousand euros;

CONSIDERING that, for the purposes of determining the amount of the pecuniary sanction, it is necessary to take into account, pursuant to art. 11 of the law of 24 November 1981 n. 689, of the seriousness of the violation, but also of the offender's personality and economic conditions;

NOTING, as regards the seriousness of the conduct, that the preliminary investigation revealed how it is attributable, at least in part, to technical errors due to the migration of the information systems of the educational institute to a different domain and that the illegality of the processing is reached only through an operation of combination between the letter "S" indicated in the

ranking and the Decree of the Ministry of Education University and Research of 1 April 2014, n. 235 which brings this letter back to the category of "civil invalids";

CONSIDERING, as regards the offender's personality and his economic conditions, that it is a public school which carries out important institutional activities in very modest economic conditions;

CONSIDERING that, for all the aforementioned reasons, the present case can be traced back, despite the particular nature of the data processed, to hypotheses of lesser gravity pursuant to art. 164-bis, paragraph 1, of the Code and that, therefore, the application of a pecuniary sanction quantified in the minimum amount of Euro 4,000.00 (four thousand) appears adequate;

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

HAVING REGARD to the documentation in the deeds;

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

SPEAKER Dr. Augusta Iannini;

ORDER

to the Istituto Comprensivo Paolo Stefanelli C.Fisc.: 97713220586, based in Rome, via Pestalozzi n. 5, in the person of the pro-tempore legal representative, to pay the sum of 4,000.00 (four thousand) euros as a pecuniary administrative sanction for the violation pursuant to art. 162, paragraph 2-bis indicated in the justification;

ENJOYS

to the same subject 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 acts pursuant to art. 27 of the law of 24 November 1981, n. 689.

Pursuant to articles 152 of the Code and 10 of Legislative Decree no. 150/2011, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal lodged with the ordinary court of the place where the data controller has his residence, within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 31 January 2019

PRESIDENT

Soro

THE SPEAKER

Iannini

THE SECRETARY GENERAL

Busia