

[doc. web no. 9468523]

Injunction order against the Municipality of Casaloldo - 3 September 2020

Register of measures

no. 154 of 3 September 2020

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 lawyer. 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");

CONSIDERING the d. lgs. 30 June 2003, no. 196 containing the "Code regarding the protection of personal data (hereinafter the "Code");

CONSIDERING the general provision n. 243 of 15/5/2014 containing the «Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of publicity and transparency on the web by public subjects and other obliged bodies», published in the Official Gazette no. 134 of 12/6/2014 and in www.gpdp.it, doc. web no. 3134436 (hereinafter "Guidelines on transparency");

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");

HAVING REGARD to 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 office of the Guarantor for the protection of personal data, in www.gpdp.it, doc. web no. 1098801;

Speaker Dr. Agostino Ghiglia;

WHEREAS

1. Introduction.

This Authority has received a complaint from the XX relating to the dissemination of personal data contained in provisions relating to a "XX" published on the institutional website of the Municipality of Casaloldo.

Specifically, as verified on the basis of the preliminary assessment carried out by the Office, it was found that in the "Transparent Administration" section of the institutional website of the aforementioned Municipality and, in particular, in the "Competition notices" area, at the url [https ://...](https://...), it was possible to view and download the following documents from the link entitled «XX»:

- 1) Decision no. XX of XX concerning xx
- 2) Document entitled XX
- 3) Document entitled XX
- 4) Document entitled XX
- 5) Document entitled XX

The aforesaid documents published online contained personal data and information of the subjects participating in the public selection described, including the claimant whose name appeared in the documents previously identified under nos. XX and XX, as a subject admitted to the written tests of the competition and present at the two competition tests, with indication of the scores obtained in the written tests and of the non-admission to the oral test (see minutes of the commission n. XX contained in the documents cited) .

2. Applicable law.

Pursuant to the legislation on the matter, "personal data" is "any information relating to an identified or identifiable natural person ("interested party") and "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 one or more characteristic elements of his physical, physiological, genetic, mental, economic, cultural or social identity" (Article 4, paragraph 1, No. 1 of the GDPR).

The processing of personal data must also take place in compliance with the principles indicated in the art. 5 of the GDPR, 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, letters a and c).

In this context, the processing of personal data carried out by public subjects (such as the Municipality) 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" (Article 6, paragraph 1, letters c and e, of the GDPR). It is also foreseen that «Member States may maintain [...] 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 specific requirements for the treatment and other measures aimed at guaranteeing lawful and correct treatment [...]» (art. 6, paragraph 2, of the RGPD), with the consequence that the provisions contained in the art. 2-ter, paragraphs 1 and 3, of the Code, where it is established that the operation of dissemination of personal data (such as publication on the Internet), by public entities, is permitted only when provided for by a law or regulation.

In this regard, it should be noted that the sector regulations applicable to the present case contained in art. 15, paragraph 6-bis, of the Presidential Decree 9/5/1994, no. 487 (Regulation containing rules on access to employment in public administrations and the procedures for carrying out competitions, single competitions and other forms of recruitment in public employment), provides, in the first place, that they are published «in the praetorian register of relevant body» the only definitive rankings of the winners of the competition at the local authorities and not also, as in the matter brought to the attention of the Guarantor, the results of the intermediate tests or the personal data of the non-winning, non-admitted or withdrawn competitors .

3. Preliminary evaluations of the Office on the processing of personal data carried out.

From the checks carried out on the basis of the elements acquired and the facts that emerged following the preliminary investigation, as well as the subsequent assessments, the Office with note prot. no. XX of the XX ascertained that the Municipality of Casaloldo, by disseminating the personal data of the competitors who did not win, were not admitted or who withdrew from the competition, including the complainant - contained in the documents identified above published on the institutional website - carried out a processing of personal data that does not comply with the relevant regulation on the protection of personal data contained in the RGPD. Therefore, with the same note the violations carried out were notified to the Municipality (pursuant to article 166, paragraph 5, of the Code), communicating the initiation of the procedure for the adoption

of the measures referred to in article 58, par. . 2, of the GDPR and inviting the aforementioned Municipality to send the Guarantor defense writings or documents and, possibly, to ask to be heard by this Authority, within the term of 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).

4. Defensive memories.

With the note prot. no. XX of the XX the Municipality of Casaloldo sent its defense writings to the Guarantor in relation to the notified violations.

In this regard, it should be remembered that, unless the fact constitutes a more serious offence, anyone who, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code, entitled «False statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the Guarantor».

Specifically, it was highlighted, among other things, that:

- «On XX with letter prot. no. XX the employees responsible for publishing the documents in the IT Register and in the "Transparent Administration" Section were asked to immediately remove the documents published on the institutional site - SEC. XX – relating to the intermediate procedures of the public competition object of the complaint, containing the references to the non-winning candidates, and in particular: of the link: "XX" the following attachments have been removed from the XX:
 - 1) XX
 - 2) XX
- «The documents relating to the final ranking of the competition have been left for publication, which do not contain any reference to the admitted, non-admitted and non-winning candidates»;
- «The minutes of the insolvency proceedings were published from the XX until the removal date of the XX»;
- «The processing in question refers to personal data (name and surname only) [and] is to be considered minor, also in relation to the duration of the publication which covered the period of possible appeal with extraordinary appeal 6 months»);
- «The disputed violation is not characterized by the subjective element of guilt nor, even less, by the subjective element of willful misconduct»;
- «Within 24 hours of receipt of the communication from the Guarantor dated XX [...] the immediate removal from the website was ordered - SEC. XX – of all documents relating to the competition procedure containing references to admitted,

non-admitted and non-winning candidates. The deeds were removed on the same date";

- «The Municipality of Casaloldo is a small institution with fewer than 3,000 inhabitants, with an organic endowment of personnel that is barely sufficient to carry out the functions of competence. The internal organization of the Organization takes into account the limited financial, human and instrumental resources».

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

The subject of the case brought to the attention of the Guarantor concerns the dissemination of data and personal information of the subjects participating in a public selection XX, including the complainant (such as identification data and results of the intermediate tests also referring to non-winning competitors, not admitted or who have retired).

In its defense briefs, the Municipality confirmed the online dissemination of the aforementioned personal data including those referring to the complainant, presenting some observations which, although worthy of consideration, do not in any case allow the findings notified by the Office to be overcome with the deed of initiation of the proceeding and are insufficient to allow the filing of the present proceeding, since none of the cases envisaged by art. 11 of the Regulation of the Guarantor n. 1/2019.

This also considering that since 2014 the Authority, in the Guidelines mentioned above, has provided all public entities with specific indications on how to reconcile the transparency and publicity obligations of administrative action with the right to protection of personal data of the interested parties .

In this context, the preliminary assessments of the Office are confirmed and the illegality of the processing of personal data carried out by the aforementioned Municipality is noted, as the complete publication in the "Transparent Administration" section of the institutional website of Resolution no. XX of the XX - concerning «XX» - with the relative attachments containing all the minutes of the examining commission (documents previously identified in par. XX) has caused a dissemination of personal data of the competitors who are not winners, are not admitted or who have withdrawn from the competition, including the complainant (such as identification data and results of the intermediate tests also referring to non-winning, non-admitted or withdrawn competitors), in the absence of suitable regulatory conditions and, therefore, in violation of art. 2-ter, paragraphs 1 and 3, of the Code and of the basic principles of the treatment contained in the articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the GDPR (see also the provision contained in article 15, paragraph 6-bis, of the Presidential Decree 9/5/1994, n. 487).

Considering, however, that the conduct has exhausted its effects, as the Municipality has declared that it has removed the

disputed documents from the institutional website, without prejudice to what will be said on the application of the pecuniary administrative sanction, the conditions do not exist for the adoption of further corrective measures pursuant to art. 58, par. 2 of the GDPR.

6. Adoption of the injunction order for the application of the administrative fine (articles 58, paragraph 2, letter i; 83 GDPR)

The Municipality of Casaloldo appears to have violated the articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b) of the GDPR; as well as the art. 2-ter, paragraphs 1 and 3, of the Code (see also the provision contained in art. 15, paragraph 6-bis, of the Presidential Decree 9/5/1994, n. 487).

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

In the present case, the violation of the aforementioned provisions - also considering the reference contained in the art. 166, paragraph 2, of the Code – is subject to the application of the same pecuniary administrative sanction provided for by art. 83, par. 5 of the GDPR, which therefore applies to the present case.

The Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the GDPR 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 every single case". 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 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).

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 GDPR.

In relation to the aforementioned elements, the reported conduct in violation of the regulations on the protection of personal data concerned the dissemination of personal data not belonging to particular categories or to criminal convictions or crimes (articles 9 and 10 of the GDPR) of subjects participating in a competition (about 50) and lasted for about six months. The Municipality of Casaloldo, which in any case is a small entity (fewer than 3,000 inhabitants) «with a staffing allocation that is barely sufficient to carry out the functions of competence» has, however, highlighted the culpable nature of the violation and is

activated to remove the personal data object of the complaint, collaborating with the Authority during the investigation of the present procedure in order to remedy the violation and mitigate the possible negative effects. In the response to the Guarantor, various technical and organizational measures implemented pursuant to articles 25-32 of the GDPR. There are no previous relevant GDPR violations committed by the Municipality of Casaloldo.

Based on the aforementioned elements, evaluated as a whole, it is deemed necessary to determine pursuant to art. 83, para. 2 and 3, of the RGPD, the amount of the pecuniary sanction, provided for by art. 83, par. 5, of the RGPD, in the amount of 2,000.00 (two 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 GDPR; as well as of the art. 2-ter, paragraphs 1 and 3, of the Code (see also the provision contained in art. 15, paragraph 6-bis, of Presidential Decree 9/5/1994, n. 487), as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same GDPR.

In relation to the specific circumstances of the present case, relating to the dissemination of personal data on the web in the absence of a suitable regulatory basis, it is also believed that the ancillary sanction of the publication of this provision on the website of the Guarantor must be applied, provided for by art. . 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019.

Finally, it is believed that the conditions set forth in art. 17 of the Regulation of the Guarantor n. 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

detected pursuant to art. 57, par. 1, lit. f), of the GDPR the unlawfulness of the processing carried out by the Municipality of Casaloldo for the violation of the articles 2-ter, paragraphs 1 and 3, of the Code and of the basic principles of the treatment contained in the articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the GDPR in the terms referred to in the justification;

ORDER

to the Municipality of Casaloldo, in the person of its pro-tempore legal representative, with registered office in Via Roma 8 - 46040 Casaloldo (MN) – Tax Code 81000510206, pursuant to articles 58, par. 2, lit. i) and 83 of the GDPR, as well as 166 of the Code, to pay the sum of 2,000.00 (two thousand) euros as an administrative fine for the violations referred to in the justification;

ENJOYS

to the same Municipality to pay the sum of 2,000.00 (two thousand) euros, according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law no. 689/1981.

It should be remembered that the offender retains the right to settle the dispute by paying - always according to the methods indicated in the annex - an amount equal to half of the fine imposed, within the term set out in art. 10, paragraph 3, of Legislative Decree lgs. no. 150 of 09/01/2011 envisaged for the lodging of the appeal as indicated below (art. 166, paragraph 8, of the Code).

HAS

the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019. It is also believed 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 GDPR, 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, 3 September 2020

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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