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Register of measures

no. 236 of 26 November 2020

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stazione, 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) no. 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 movement of such data (General Data Protection Regulation, hereinafter, "Regulation") ;

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196, as amended by Legislative Decree 10 August 2018, n. 101, containing the Code regarding the protection of personal data (hereinafter the "Code");

HAVING REGARD to Directive (EU) 2016/680 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 by the competent authorities for the purposes of the prevention, investigation, detection and prosecution of criminal offenses or execution of penal sanctions, as well as the free movement of such data and which repeals the framework decision 2008/977/GAI of the Council (hereinafter "Directive");

CONSIDERING the Legislative Decree of 18 May 2018, n. 51 containing the implementation of the Directive which entered into force on 8 June 2018;

CONSIDERING the Decree of the President of the Republic 15 January 2018, n. 15 containing the "Regulation pursuant to article 57 of legislative decree 30 June 2003, n. 196, containing the identification of the methods of implementation of the principles of the Code regarding the protection of personal data in relation to the processing of data carried out, for police purposes, by police bodies, offices and commands";

CONSIDERING the art. 49 of Legislative Decree no. 51/2018 according to which "article 57 of the Code is repealed after one year from the date of entry into force of this decree. The decrees adopted in implementation of articles 53 and 57 of the Code continue to apply until the adoption of different regulations pursuant to articles 5, paragraph 2, and 9, paragraph 5"

(paragraphs 2 and 3 of the art. 49 cit.) ;

CONSIDERING 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 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 general secretary 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. Agostino Ghiglia;

WHEREAS

1. The story.

From press reports it emerged that in the early hours of 20 March 2019, inside the XX Commissariat, the episode of a violent self-harming reaction by a man in an evident state of psycho-physical alteration took place, whose images and whose videos were released in the days following the incident on some websites. From the aforementioned video you can clearly see the man's face, while he injures his head, and we can clearly hear that, amidst desperate lamentations, he declares that he is ill with cancer and that he has AIDS.

Following this disclosure, the Guarantor ordered urgent measures for the temporary limitation of the processing pursuant to art. 58, par. 2, lit. f) of the Regulation, referring to the further diffusion of the images relating to the aforementioned episode in ways that make the interested party identifiable and which are also detrimental to his dignity. In particular, the images disseminated in this way resulted in conflict with the articles 137, paragraph 3, of the Code, as well as with the articles 8 and 10 of the "Deontological rules relating to the processing of personal data in the exercise of journalistic activity" (Official Gazette of 4 January 2019, n. 3). In this regard, the competent Department has today proposed the measures to be taken against of the data controllers of the websites that disseminated the video.

2. The preliminary investigation.

Taking into account that the images and video in question concerned an episode that occurred in the presence of police officers and inside a police station, the Guarantor ("Office") also launched an investigation against the Ministry of the Interior ("Ministry"), to which he sent a request for information, also addressed to the concerned Commissioner's Office as well as to

the Police Headquarters of XX. Clarifications were requested regarding the collection, recording and dissemination of the aforementioned images and videos, in the light of the regulations on the protection of personal data, as well as on the technical-organizational measures adopted in order to guarantee compliance with the aforementioned regulations, with particular reference to the provisions of art. 14 of the Presidential Decree 15/2018 entitled "Disclosure of personal data and images" (prot. note no. 12895 of 15 April 2019).

From the feedback provided by the Ministry, it emerged that the person concerned, being at an office of the aforementioned Commissariat (following his arrest), around 03.15, while he was in the custody of the staff of another Commissariat, at the height of an emotional reaction, "began to perform acts of self-harm, giving violent head bangs to a plasterboard wall, which delimits that room from a larger room, so as to cause its irreversible deterioration" (page 2 note prot. n. 555-DOC /C/SPEC/SPORD/2180/19 of 3 May 2019).

With regard to the description of the factual circumstances, the Ministry represented that: - "to safeguard the safety of the people present and avoid further damage to the property, the "XX" operating unit decided to resort to the use of pepper spray, supplied to the staff"; - "these operations were the subject of audiovisual documentation. In this regard, it should be noted that the filming was carried out on his own initiative by one of the operators present on site, by activating a private communication device, such as a cell phone or smartphone, presumptively to provide documentation of both the acts of self-harm and the simultaneous damage of state assets. These operations were acknowledged in an integration to the arrest report. It should be noted that the registration was never delivered to the "XX" Commissioner's Office, both in copy and in its original form"; - "subsequently, a copy of the film, after being acquired from the internet, was appropriately burned onto a CD and was then made available to the A.G. authority with a separate communication" (cf. note dated 3 May cited). In the aforementioned reply, it is also represented that the footage in question documents "judicial police acts" but that "the ways in which these images were subsequently disclosed and disseminated on the internet are not currently known and are currently the subject of a autonomous and punctual preliminary investigation, aimed at reconstructing the facts and clarifying these aspects", also representing that "the operations of collection and registration, as well as dissemination of the personal images in question were carried out in conflict with the relevant provisions, on the initiative of operators not authorized by the hierarchy" (cf. note of 3 May cited above).

With regard to the technical-organizational measures adopted to ensure compliance with the principles governing the discipline

on the matter, the Ministry has produced: the 2005 guidelines of the Department of Public Security for the compilation of the Security Policy Document (now hereinafter "DPS") and the DPS of the XX Police Headquarters of 28 January 2006; the circular of 26 June/6 July 2018 from the Chief of Police, Director General of Public Security, illustrating the new national regulatory framework on the protection of personal data, with particular reference to the Regulation and Legislative Decree no. 51/2018; the circular of 21-24 December 2018 from the Chief of Police concerning the professional updating of State Police personnel for the year 2019; the circular of 5 April 2019 from the Director of the Office for the General Administration of this Ministry relating to the D.P.R. no. 15/2018, with specific reference to the fulfillment of art. 30, paragraph 3, of the Presidential Decree quoted (cf. note dated May 3 cit.).

Following this response, the Office sent a similar request for information to the data protection officer of the Ministry, with note prot. no. 16811 of 20 May 2019, which he found by fully recalling the evaluation elements already provided by the Ministry itself (note of 22 May 2019).

With note prot. no. 22805 of 2 July 2019, the Office, on the basis of the elements acquired in the context of the investigation launched, and the subsequent assessments carried out, notified the Ministry, pursuant to articles 42, paragraph 4, of Legislative Decree no. 51/2018, 166, paragraph 5, of the Code and 12 of the Reg. of the Guarantor n. 1/2019, the initiation of the procedure for the adoption of the provisions pursuant to articles 37, paragraph 3, and 42 of Legislative Decree no. 51/2018, inviting the aforesaid owner to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (art. 166, paragraphs 6 and 7, of the Code; art. 18, paragraph 1, of law n. 689 of 11/24/1981; art. 13, paragraph 3, Regulation of the Guarantor n. 1/2019). In particular, the Office noted that the Ministry has implemented a treatment of the personal data of the interested party, in the manner described above, in violation of articles 4, 8 and 10 of the Directive and of the articles 3, 5 and 7 of Legislative Decree no. 51/2018 and that "the violation of articles 3 and 7 of Legislative Decree no. 51/2018 makes the administrative sanction provided for by art. 42 of Legislative Decree no. 51/2018, in the light of the elements referred to in art. 83, paragraph 2, of the Regulation (see art. 42, paragraph 3, Legislative Decree no. 51/2018). Furthermore, the violation of 5, 6 and 9 of the Regulation makes the administrative sanction pursuant to art. 83, paragraph 5, of the Regulation." (note of 2 July 2019 cited above).

Following the note containing the objections pursuant to art. 166 of the Code, the Ministry sent its defense briefs, with note dated August 2, 2019 no. 555-DOC/C/SPEC/SPORD/2180/19. In particular, in addition to what has already been reported

previously and with regard to the matter in question, the Ministry represented that: "The investigations carried out so far have in any case made it possible to ascertain that the video was made at the invitation of the crew chief of the patrol that intervened - intent on handling the arrested - by the second operator. The latter, admitting his superficiality, sent the aforementioned video to another colleague - in the identification phase - with the intention of sharing the operating methods adopted in the complex intervention." (note of 2 August 2019 cited above). From a legal point of view, the Ministry highlighted that: "The work of the policemen - which described up to now can be considered directly descending from the tasks related to the performance of the service - has instead diverged from it due to the further developments of the story, highlighted below. First of all, it should be emphasized that the video recording activity was carried out on the initiative of the aforementioned operators, using a private device, without timely information and authorization from a hierarchical superior. Mention was made of the aforementioned recording activity in an integration of the arrest report, but the authors never delivered the video to the staff of the competent Commissioner's Office for the drafting of the documents, who, to integrate the information to the Judicial Authority, had to "download" it from the internet. In addition to this, the agent who made the video - who admitted its superficiality - sent it to another colleague, thus originating the sequence of disclosure documents - on which investigations are still underway aimed at identifying all the subjects involved - which led to the publication of the same on the net. Therefore, the processing of personal data for which this Authority has initiated the sanctioning procedure as it does not comply with the regulations on the protection of personal data - and consisting in the dissemination of videos and images - is attributable solely to the work of the individual subjects who materially contributed to the diffusion of such contents. These are behaviours, not only not directly attributable to the Administration, but also unavoidable, as they are the result of the initiative of members of the State Police, but which in doing so have gone beyond the institutional tasks - in the present case of prevention and prosecution of crimes - also violating specific regulatory provisions. On this point, in fact, the Police Headquarters of XX - as already highlighted - has activated a specific disciplinary procedure pursuant to Presidential Decree 25 October 1981, no. 737, stating "Disciplinary sanctions for the personnel of the Public Security Administration and regulation of the related procedures". In summary: - the Administration acquired the video (made by an agent with a private device) only after its illicit dissemination on the internet; - no data processing was therefore carried out by the Administration before the illicit diffusion of the video in question; - the Administration itself subsequently came into possession of the video, downloading it from the network, and - only at that point - processed the personal data of the interested party, consisting in making it available to the Judicial

Authority, entirely lawful pursuant to of the combined provisions of Articles 1, paragraph 2, and 5, paragraph 1, of Legislative Decree no. 51/2018.” (see page 4 note dated 2 August 2019 cit.).

The Ministry also represented that the XX Police Headquarters took steps to verify whether the video in question was still available online, affecting the Lazio Postal and Communications Police Department, of which it attached a note dated 30 July 2019 addressed to police station concerned, and informed the Guarantor of the establishment of the "Mission structure for the identification and implementation of technical-organizational measures regarding the processing of personal data", which took place with the decree of the Chief of Police of 23 July 2019.

With subsequent note of 9 August 2019 n. 555-DOC/C/SPEC/SPORD/4161-19, the Ministry communicated that, at the request of the Police Headquarters of XX, the successful removal of the video in question by two websites and, lastly, with a note dated 4 October 2019 no. 555-DOC/C/SPEC/SPORD/5045-19, “that the Police Headquarters of XX communicated that the Public Prosecutor's Office at the Court of Rome has initiated criminal proceedings no. 34997 /19 N charged to the operator who made the video in question and subsequently, as ascertained, shared it with other colleagues via "WhatsApp chat".

With communication to the Guarantor dated 18 December 2019, the interested party requested the intervention of the Authority against the Commissioner in question held responsible for the disclosure of images concerning the same, with which the Office had a dialogue regarding the permanence on some sites of the images in question, which were later removed.

3. Outcome of the preliminary investigation.

On the basis of the regulation on the protection of personal data, which regulates the processing of personal data by the competent authorities for the purposes of prevention, investigation, detection and prosecution of crimes or execution of criminal sanctions, the owner processes personal data (art. 3, no. 1, of the Directive and art. 1, paragraph 2, Legislative Decree no. 51/2018) in a lawful, correct and transparent manner (art. 4, paragraph 1, letter a) of the Directive) and in compliance with the conditions set out in articles 8 and 10 of the Directive.

In implementation of the same Directive, Legislative Decree no. 51/2018 provides that the aforementioned personal data are:

“a) processed lawfully and correctly; b) collected for specific, expressed and legitimate purposes and processed in a manner compatible with these purposes; c) adequate, pertinent and not excessive with respect to the purposes for which they are processed; (...) e) stored in ways that allow the identification of data subjects for the time necessary to achieve the purposes for which they are processed, subject to periodic examination to verify the persistent need for conservation,

canceled or anonymized once this period has elapsed; f) processed in such a way as to guarantee adequate security and protection from unauthorized or unlawful processing and from accidental loss, destruction or damage, through the adoption of adequate technical and organizational measures." (Article 3, paragraph 1, Legislative Decree No. 51/2018).

Processing is lawful "if it is necessary for the performance of a task of a competent authority for the referred to in article 1, paragraph 2, and is based on European Union law or on legal provisions or, in cases provided for by law, regulations that identify personal data and the purposes of the processing." (Article 5, paragraph 1, Legislative Decree No. 51/2018).

The processing of particular categories of personal data, including data relating to health (see articles 9 of the Regulation and 10 of the Directive), is authorized "only if strictly necessary and supported by adequate guarantees for the rights and freedoms of the concerned and specifically provided for by European Union law or by law or, in the cases provided for by law, by regulation, or, without prejudice to the guarantees of rights and freedoms, if necessary to safeguard a vital interest of the data subject or of another natural person or if it relates to data made manifestly public by the data subject." (Article 7 of Legislative Decree No. 51/2018).

With particular reference to the dissemination of data and images, the art. 14 of the Presidential Decree no. 15/2018 establishes that: "The dissemination of personal data is permitted when it is necessary for the police purposes referred to in article 3, without prejudice to the obligation of secrecy referred to in article 329 of the criminal procedure code and the prohibitions foreseen by other provisions of law or regulation; however, it is carried out with respect for the dignity of the person. 2. Dissemination of personal images is permitted when the person concerned has given his consent or is necessary for the protection of life or physical integrity or is justified by the need for justice or the police; it is in any case carried out in such a way as not to prejudice the dignity of the person. 3. The Guarantor is informed of the general directives adopted at a national level on the dissemination of personal data or images."

Finally, with regard to the obligations of the owner who is responsible for compliance with the principles set out in art. 3, co. 1, legislative decree n. 51/2018 (art. 3, co. 4, cit.) and able to prove it (see art. 4 par. 4, of the Directive), it is represented that, pursuant to art. 15 of Legislative Decree no. 51/2018, "1. The data controller, taking into account the nature, scope, context and purposes of the processing, as well as the risks to the rights and freedoms of natural persons, implements appropriate technical and organizational measures to ensure that the processing is carried out in compliance with the provisions of this decree. 2. The measures referred to in paragraph 1 shall be reviewed and updated as necessary and, where proportionate to

the processing activity, shall include the implementation of adequate data protection policies by the controller."

Even in the presence of a specific regulatory provision that legitimizes the processing of personal data, the data controller is therefore required to comply with the principles of "lawfulness and correctness", "purpose limitation", "minimization", "limitation of retention ", as well as "integrity and confidentiality" of data and "accountability" (articles 4 of the Directive and 3 of Legislative Decree, n. 51/2018).

3.1. The processing of the data of the interested party.

Having taken note of what was represented by the Ministry, it is ascertained that:

- the recording in question was made in order to provide audiovisual documentation of the operations carried out at the time of the self-harming reaction of the arrested person by the police officers, who decided to resort to the use of pepper spray, supplied to the staff, to safeguard the safety of the people present and to avoid further damage to the property and that the aforementioned operations "were acknowledged in an integration to the arrest report" (see page 2 of the note of 2 August 2019);
- the footage documents "judicial police acts, of which they form an integral part, intended to "crystallize" the facts as reported, thus confirming that the injuries suffered by the arrested person were a consequence of the aforementioned acts of self-harm and simultaneous damage and aggression against the police personnel who had custody" (see page 2 of the note of 2 August 2019);
- the filming was carried out by one of the operators present on site by activating a private communication device, such as a cell phone or smartphone, "at the invitation of the crew chief of the patrol that intervened, intent on managing the arrested person" (see page 2 of the note of 2 August 2019);
- regarding the treatments following the aforementioned registration, the film in question is never delivered either in copy or in original to the Commissioner of XX, however, a copy was acquired from the internet, which was subsequently burned onto a CD and placed available to the A.G. competent with separate communication (see page 2 of the note of 2 August 2019);
- on the other hand, regarding the dissemination and dissemination of the video and related images on the internet, the agent who proceeded to resume the aforementioned operations, "admitting its superficiality, sent the aforementioned video (...) with the intention of sharing the operating methods adopted in the complex intervention" (see page 3 of the note of 2 August 2019) to "other colleagues via WhatsApp chat" (see note of 4 October 2019).

From the documentation in the documents it emerged, therefore, that the shootings in question ("an integral part of judicial police documents") were carried out by police officers, in the exercise of their duties, in order to document what was happening in the aforementioned police station . These data, which fall into "special categories" of data, pursuant to articles 9 of the Regulation, 10 of the Directive and 7 of Legislative Decree no. 51/2018 (in consideration of the injuries that the interested party sustained during the filming of the agent and the declarations of the interested party that can be heard in the video in relation to his general state of health), were therefore treated by the authority competent for the prevention, investigation, detection and prosecution of crimes, against a data subject who was under arrest in the custody of police officers (Articles 1, paragraph 2, Legislative Decree No. 51/2018 and 1 Presidential Decree no. 15/2018).

In this regard, we first of all acknowledge the extraordinary nature of the incident and the particular characteristics of the place where it occurred ("office space, without a video surveillance system"), which justified the urgent acquisition and audiovisual recording of what was happening through the private device of a police officer ("to safeguard the safety of the people present and avoid further damage to the property").

However, the subsequent treatments referring to the data in question did not comply with the aforementioned regulations on the protection of personal data (articles 4 of the Directive and 3, paragraph 1, letter a), b), c), e) , f) and 7 of Legislative Decree, n. 51/2018).

In fact, as we have seen, in a supplement to the arrest report of the person concerned, an account was given of the judicial police acts carried out within the aforementioned police station, of which the footage constitutes an "integral part" because it is intended to "crystallize" the facts as reported "confirming, therefore, that the injuries suffered by the arrested person were a consequence of the aforementioned acts of self-harm and of simultaneous damage and aggression against the police personnel in their custody" (see page 2 of the note of 2 August 2019).

However, from the preliminary investigation carried out, neither the Commissioner's Office in which the serious events in question took place in full evidence, nor the Commissioner's Office whose agents intervened appear to have adopted any suitable measure to guarantee the due security and confidentiality of the data in question nor least of all to prevent its release and diffusion via the internet.

In this regard, it is hardly necessary to observe that this is an absolutely illegitimate diffusion, as the Ministry itself peacefully acknowledges, made possible by the aforementioned lack of any suitable measure to protect the data in question by

preventing improper circulation.

The provisions relating to data retention, the compatibility of the processing with the purposes for which they were collected, the non-excess data, adequate security and protection from unauthorized processing and adequate guarantees for the rights and freedoms are thus violated. of the interested party requests for particular categories of data (articles 3 and 7 of Legislative Decree 51/2018). Further confirmation is provided by the Administration itself which "acquired the video (...) only after its illicit dissemination on the internet; no data processing was (...) carried out by the Administration before the illicit dissemination of the video in question; the Administration itself subsequently came into possession of the video, downloading it from the network, and - only at that point - processed the personal data of the interested party, consisting in making it available to the Judicial Authority, entirely lawful pursuant to the combined provisions of Articles 1, paragraph 2, and 5, paragraph 1, of Legislative Decree no. 51/2018." (see page 4 note dated 2 August 2019 cit.).

With regard to the dissemination of the video, the Ministry's first response revealed that the operator of the same subsequently transmitted it "with the intention of sharing the operating methods adopted in the complex intervention [which took place at the Commissioner's Office]".

With regard to the methods of dissemination on the internet, the Ministry first declared, in the defense briefs of 2 August 2019, that the same (at the time) were not known and were still the subject of an independent and timely preliminary investigation, "with particular regarding the ascertainment of responsibility, also of a disciplinary nature, to be ascribed to the behavior of the operator who carried out such filming".

Subsequently, with a note dated 4 October 2019, the Ministry reported that the operator who made the video subsequently shared it with other colleagues via WhatsApp chat. Considering this, even in the absence of any authorization to share the video and without prejudice to any consequences of a disciplinary and/or criminal nature against the natural person to whom the single behavior is attributable, the same sharing on the chat would seem attributable to service purposes or in any case the exclusively personal purpose of the same is not demonstrated with certainty.

Moreover, even regardless of the purpose of the aforementioned sharing and the identification of disciplinary and/or criminal responsibilities for the disclosure of the aforementioned images on the internet, the imputability of the processing in question for the purpose of adopting corrective, sanctioning and/or claims (see articles 82 and 83 of the Regulation and 41 and 42 of Legislative Decree no. 51/2018), is in any case attributable to the Ministry. In fact, the public entity is liable for the unlawful act

of its employee "whenever this would not have occurred without the exercise of public functions or attributions or powers: and this regardless of the subjective purpose of the agent (not being able to depend on the regime of objective liability from the connotations of the psychological attitude of the perpetrator of the act), but in relation to the objective destination of the conduct for purposes other than institutional ones or - a fortiori - contrary to those for which the functions or attributions or powers had been conferred" (Cass. Civ. United Section, No. 13246 of 16 May 2019). In this case, the events took place inside police offices by agents against a temporarily restricted person and therefore the nexus of necessary occasional circumstances is absolutely present on the basis of which the conduct is attributable to the Administration.

Furthermore, taking into account that the data controller - recipient of the corrective measures sanctioning by the Guarantor - is, according to the legislation on data protection, the subject who "determines the purposes and means of the processing of personal data" (art. 4 par. 1 n. 7) Regulation), it must be noted that in the case in question the release of the video in question took place by a police officer, who in the exercise of his duties had acquired and recorded the images and, therefore, the ownership of the treatment is to be attributed, also in terms of the rigorous application of the regulations on the matter, to the Ministry.

As for the technical and organizational measures already adopted by the owner at the time of the processing in question, to ensure that the processing for police purposes took place in compliance with the regulations on the protection of personal data, the Ministry produced:

- the documents relating to the Security Policy Document (in particular, with regard to the XX Police Headquarters, the DPS dated 2006);
- the circular of 26 June/6 July 2018 from the Chief of Police, illustrating the new national regulatory framework on the protection of personal data, with particular reference to the Regulation and Legislative Decree no. 51/2018 (as well as, with regard to the Police Headquarters of XX, the circular of 25 September 2018 with which Legislative Decree 51/2018 was issued to its employee offices);
- the circular of 21-24 December 2018 from the Chief of Police concerning the professional updating of State Police personnel for the year 2019 (as well as, with regard to the Police Headquarters of XX, the circular of 12 February 2019, with which has provided training modules for its staff). In particular, for the year 2019, no. 1 day of in-depth study addressed to all staff on the topic of general interest, called "anti-corruption and new regulations on the protection of personal data".

These technical-organizational measures have proved to be not fully adequate for the formation of a full and effective knowledge and awareness on the part of the police operators (in this case, of all those who have been involved from the beginning in the treatments in question) of the risks deriving from data subjects from processing for police purposes.

Moreover, during the investigation in question, the Office was informed by the owner of the institution, in July 2019, of the "Mission structure for the identification and implementation of technical-organizational measures regarding the processing of personal data" having the task of "a) identifying - also through specific reconnaissance activities - the solutions and technical-organizational measures aimed at guaranteeing that the processing of personal data carried out in the various sectors of institutional activity by the central and territorial divisions are carried out in full compliance the principles and provisions established by current legislation on the processing of personal data; b) develop targeted proposals for the adoption of the provisions of the Chief of Police - Director General of Public Security, necessary to fully implement the provisions on the processing of personal data for the various institutional purposes pursued within the department and in the territorial structures, with particular reference to police purposes; c) inform and provide advice to the top management of the data controller identified in the Department of Public Security, as well as to those who carry out the processing, with regard to the obligations deriving from Regulation (EU) 2016/679 of 27 April 2016, from the d Legislative Decree 18 May 2018, n. 51 and by other provisions of the European Union or of the Member States or of the State, relating to data protection, as well as on any other matter on the subject, also concerning the "data subject's right of access" to personal data concerning him; d) provide an opinion on data protection impact assessments and monitor their performance pursuant to article 35 of Regulation (EU) 2016/679 of 27 April 2016 and article 23 of Legislative Decree 18 May 2018, no. 51; e) cooperate with the Guarantor for the Protection of Personal Data; f) act as a point of contact for the same Guarantor for matters related to the treatment, including the preventive consultations referred to in article 36 of Regulation (EU) 2016/679 of 27 April 2016 and in article 24 of Legislative Decree 18 May 2018, no. 51 and carry out, if necessary, consultations in relation to any other matter; g) undertake all the necessary initiatives for the purpose of achieving the provisions of the previous letters." (art. 3, co. 1, decree of the Chief of Police of 23 July 2019).

Considering this, the disclosure in question appears to have occurred in violation of the regulations on the protection of personal data pursuant to the Directive and Legislative Decree no. 51/2018, and, in particular, in violation of art. 14 of the Presidential Decree no. 15/2018 according to which "The dissemination of personal data is permitted when it is necessary for

the police purposes referred to in article 3, without prejudice to the obligation of secrecy referred to in article 329 of the criminal procedure code and without prejudice to the prohibitions foreseen by other provisions of law or regulation; however, it is carried out with respect for the dignity of the person. 2. Dissemination of personal images is permitted when the person concerned has given his consent or is necessary for the protection of life or physical integrity or is justified by the need for justice or the police; it is in any case carried out in such a way as not to prejudice the dignity of the person. 3. The Guarantor is informed of the general directives adopted at a national level on the dissemination of personal data or images.”.

Finally, taking into account that the treatments in question concerned particular categories of data, it does not appear that they have been assisted by adequate guarantees for the rights and freedoms of the interested party in accordance with art. 7 of Legislative Decree no. 51/2018.

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 ☐ and considering that, unless the fact constitutes a more serious crime, anyone who, in a proceeding before the Guarantor, falsely declares or certifies or circumstances or produces false deeds or documents, it is liable pursuant to art. 168 of the Code "False declarations to the Guarantor and interruption of the execution of the duties or the exercise of the powers of the Guarantor" ☐ the elements provided by the data controller in the defense briefs do not allow to overcome the findings notified by the Office with the deed of initiation of the proceeding, since none of the cases envisaged by art. 11 of the Regulation of the Guarantor n. 1/2019.

In other words, the data, which the Ministry had at its disposal for and for the performance of its institutional duties, which were under its full and exclusive control and in relation to which it had a well-detailed custody obligation by the rules on the protection of personal data, have been communicated and disseminated in violation of the rules themselves and in a seriously damaging way to the dignity of the person concerned.

For these reasons, the illegality of the processing of personal data, which led to the disclosure of the images and video in question, carried out by the Ministry of the Interior in violation of art. 3, co. 1, lit. a), b), e), f) and of the art. 7 of Legislative Decree no. 51/2018.

The art. 42, paragraph 1, of Legislative Decree no. 51/2018 establishes that, unless the fact constitutes a crime and with the exclusion of processing carried out in the judicial field, the violation of the provisions referred to in article 3, paragraph 1, letters

a), b), d), e) and f), in article 7, is punished with the administrative sanction of payment of a sum from 50,000 to 150,000 euros.

The same article establishes in the third paragraph that in determining the administrative sanction to be applied the criteria referred to in article 83, paragraph 2, letters a), b), c), d), e), f), g shall be taken into account), h), i), k), of the EU Regulation. On the basis of these criteria, it must first of all be considered that the data controller has shown himself to cooperate with the Office in all circumstances and has taken action during the investigation for the removal of the video in question still present on the internet (see notes of the August 2, 2019 and August 9, 2019). Furthermore, the establishment, which took place with the decree of the Chief of Police of 23 July 2019, of the Mission Structure for the identification and implementation of the technical-organizational measures regarding the processing of personal data must be favorably taken into account.

Even in consideration of the collaboration of the Ministry in order to ascertain the facts and circumscribe the prejudice for the person concerned, it is deemed appropriate to commensurate the sanction to the statutory minimum (equal to 50,000.00 euros) increased by 20%, in relation to the particular nature of the data in question and the gravity of their making available to an indeterminate audience of subjects for the interested party, who still in December 2019 signaled their persistence on the net.

ALL THIS CONSIDERING THE GUARANTOR

declares the illegality of the data processing of the interested party for violation of the art. 3, co. 1, lit. a), b), e), f) and of the art. 7 of Legislative Decree no. 51/2018, in the terms referred to in the motivation and, consequently,

ENJOYS

pursuant to art. 37, paragraph 2, lett. b), and 3 lett. c) and d) of Legislative Decree no. 51/2018:

- to transmit to the Guarantor the general directives adopted pursuant to art. 14, paragraph 3, Presidential Decree no. 15/2018 within 120 days from the date of receipt of this provision;
- to evaluate the opportunity:
 - to promote adequate and further training initiatives for the personnel, even peripheral, of the State Police, to ensure respect for the rights of the interested parties;
 - to identify further technical-organizational measures aimed at guaranteeing that the processing of personal data carried out in the various sectors of institutional activity by the central and territorial divisions is carried out in full compliance with the

principles and provisions established by current legislation on the processing of personal data (art. 3 of the decree of the Chief of Police of 23.7.2019)

and to report the outcome of these assessments to the Guarantor within 180 days of the date of receipt of this provision.

ORDER

to the Ministry of the Interior, data controller, to pay the sum of 60,000.00 (sixty thousand) euros as an administrative fine for the violations indicated in the justification, representing 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 aforementioned owner, in the event of failure to settle the dispute pursuant to the aforementioned art. 166, paragraph 8, of the Code, to pay the sum of 60,000.00 (sixty 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 n. 689/1981.

HAS

pursuant to art. 166, paragraph 7, of the Code, the full publication of this provision on the Guarantor's website.

Pursuant to art. 39, paragraph 3 of Legislative Decree no. 51/2018 and 10 of Legislative Decree lgs. 1 September 2011, no. 150, against this provision, an opposition can be filed, alternatively, with the court of the place where the data controller resides or has its registered office, or with the court of the place of residence of the interested party, within the term of thirty days from the date of communication of the provision itself.

Rome, November 26, 2020

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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