

[doc. web n. 9688099]

Injunction order against the Professional Institute for commercial and tourist services "G. Ravizza "in Novara - June 24, 2021

Record of measures

n. 255 of 24 June 2021

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, Professor Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, members, and the cons. Fabio Mattei, general secretary;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / CE, "General Data Protection Regulation" (hereinafter, "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of individuals with regard to to the processing of personal data, as well as to the free circulation of such data and which repeals Directive 95/46 / EC (hereinafter the "Code");

GIVEN the Regulation n. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved by resolution no. 98 of 4 April 2019, published in the Official Gazette n. 106 of 8 May 2019 and in www.gdpd.it, doc. web n. 9107633 (hereinafter "Regulation of the Guarantor no. 1/2019");

Having seen the documentation in the deeds;

Given the observations made by the secretary general pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and functioning of the office of the Guarantor for the protection of personal data, Doc. web n. 1098801;

Speaker prof. Pasquale Stanzione;

WHEREAS

1. Introduction.

With a complaint of the XX, submitted pursuant to art. 77 of the Regulations, the publication of some documents was complained of, in the "Transparent Administration" section of the website of the Professional Institute for commercial and

tourist services "G. Ravizza "of Novara (hereinafter the" Institute "), where the complainant, at the time of filing the complaint, played the role of XX, containing personal data of the complainant and her family members, including information relating to the state of health of the XX. In particular, it was represented that the complainant, XX, "as usual [had] entered the application with the relative documentation on the internal portal" Regel "[...]. From a search on the Internet, by entering your name a link was displayed on the Google search engine and by opening the link ipsravizza.edu.it / ... all the original documents were displayed.

Following a request for deletion of documents from the site, the Institute removed the documentation "after about five days" from the request itself. In fact, after reporting to the Director of the Institute's General and Administrative Services, who "verified the validity of the complaint and that all the documents had been placed online and visible to all", the complainant was contacted "by the manager [of the Institute] , which [...] ensured that the situation had been restored ".

2. The preliminary activity.

With a note dated XX (prot. No. XX), the Institute, in response to a request for information formulated by the Office, stated, in particular, that:

- the documentation "containing personal data, including health data referable to the XXth, was published in the Transparent Administration section of the website of this Institute, on XXth";
 - "by mere mistake" [...] the Administrative Assistant, in carrying out his duties, mistakenly activated the check that made the documents in question visible ";
 - "following the notification made by the interested parties themselves, on XX date, this Institute [...] immediately eliminated [...] the personal data erroneously disclosed, also removing from the search engines all references that refer to the contents online [...]. The file has been removed from the Regel server - Transparent administration - by removing the check mark that made it visible ";
 - "This Institute informed the interested parties of the aforementioned cancellation and proceeded" within the terms of Article 33 of the GDPR, on XX date, to notify [the Guarantor] of the violation by certified e-mail, documenting it in the violation register ".
- With a note of the XX (prot. , pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in art. 58, par. 2, of the Regulation, concerning the alleged violations of articles 6, par. 1, lett. c) and e) and para. 2 and 3 lett. b), 9 and 5, par. 1, lett. a) and c), of the Regulations, as well as of articles 2-ter, paragraphs 1 and 3

and 2-septies, paragraph 8 of the Code, inviting the aforementioned holder to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (Article 166, paragraphs 6 and 7 of the Code , as well as art. 18, paragraph 1, of the l. 24 November 1981, n. 689).

The institute sent its defense briefs, with a note of the XX (prot. No. XX), representing, in particular, that:

- "the ascertained violation lasted for a limited period [...] (publication of the data on the praetorian notice board of the Institute for about a month) and following the report made by the interested parties, the school immediately removed from the its website the documentation containing the personal data erroneously disclosed, also providing for the removal from the search engines of all references that refer to the online content in question. The file was immediately removed from the Regel server - Transparent administration - by removing the check mark that made it visible ”;
- "the number of interested parties involved is extremely limited (3 people) [...] and] the publication of the data for which the violation in question was ascertained took place by mere error, having to totally exclude any intentional or negligent intent”;
- the “timely removal from its website of the documentation containing the personal data erroneously disclosed [...] and the] removal from the search engines of all references that referred to the online content in question was carried out; [the interested parties were contacted for updates on the status of the measures adopted to mitigate the consequences of the violation ”;
- "the institution, with particular reference to organizational measures, [represents that] a privacy organization chart has been defined. All personnel have been designated authorized to process personal data and have received instructions on how to process the data; the school also appointed the data protection officer. The staff has been trained on the formalities to be put in place to protect the data of their interested parties. A data protection policy has been adopted and the register of processing activities has been drawn up in which the processing carried out by the school is defined. The Institute has adopted a procedure for data breach management and the preparation of a register of violations ”;
- “the Institute has, within the terms provided for by paragraph 1 of art. 33 of the GDPR, on XX to notify the Guarantor Authority of the violation in question by PEC documenting it, in addition, on the Register of Violations. Following the request for information by the Guarantor Authority, the Institute [...] cooperated with this Authority by representing what happened in the most transparent way possible and admitting the error underlying the ascertained data breach ”.

3. Outcome of the preliminary investigation.

3.1 The regulatory framework.

The personal data protection discipline provides that public subjects, even if they operate in the performance of their duties as employers, may process the personal data of workers, also relating to particular categories of data - which also include "data relating to health" (see art. 9, par. 1, of the Regulation) - if the processing is necessary, in general, for the management of the employment relationship and to fulfill specific obligations or tasks provided for by national sector regulations (art. 6, par. 1, lett. c) and e); 9, par. 2, lett. b) and par. 4; 88 of the Regulation).

The national legislation has also introduced more specific provisions to adapt the application of the rules of the Regulation, determining, with greater precision, specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing (Article 6, par. 2, of the Regulation) and, in this context, has provided that the processing operations, and among these the "dissemination" of personal data, are allowed only when provided for by a law or, in the cases provided for by law, by regulation (Article 2-ter, paragraphs 1 and 3, of the Code).

In any case, "data relating to health", ie those "relating 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, par. 1, n. 15, of the Regulation), due to the greater guarantees that the Regulation and the Code recognize due to the particular sensitivity of this category of data, "cannot be disclosed" (art. 2-septies, paragraph 8, of the Code and art. 9, par. 4, of the Regulation).

The data controller is also required to comply with the principles of data protection, including that of "lawfulness, correctness and transparency" as well as "minimization", on the basis of which personal data must be "processed in lawful, correct and transparent manner towards the interested party" and must be "adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed" (Article 5, paragraph 1, letters a) and c), of Regulation).

3.2 Dissemination of personal data

In this context, it is noted that, although the Institute, after the report by the interested party, immediately proceeded to delete the personal data of the complainant and her family members disclosed erroneously, such publication took place, in any case, in the absence of an appropriate legal basis (i.e. in the absence of an express law or, in the cases provided for by law, a regulation) and, with reference to particular personal data, including data relating to the state of health of the complainant's XX, in violation of the prohibition of dissemination provided for by art. 2-septies, paragraph 8, of the Code.

It does not matter, for the purpose of excluding the harmful conduct, even if the institute recognized the mistake from the outset, having put in place all the behaviors provided for by the provisions of the Regulation, immediately notifying pursuant to

art. 33 the violation and cooperating in a transparent manner with the same Authority. These circumstances are taken into account for the purpose of the amount of the sanction.

Given the above, in the light of the foregoing considerations, the processing appears to have occurred in violation of Articles 5, par. 1, lett. a) and c), 6 and 9 of the Regulations and articles 2-ter and 2-septies, paragraph 8, of the Code.

4. Conclusions.

In light of the aforementioned assessments, it is noted that the statements made by the data controller in the defense writings ☐ whose truthfulness may be called upon to answer pursuant to art. 168 of the Code - although worthy of consideration, they do not allow the findings notified by the Office to be overcome with the act of initiation of the procedure and are insufficient to allow the filing of this procedure, however, none of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

It is also represented that the violation by the Institute took place in full force of the provisions of the Regulation, and that, therefore, in order to determine the regulatory framework applicable in terms of time (Article 1, paragraph 2, 689 of 24 November 1981), these constitute the provisions in force at the time of the violation committed, which in this case took place from the 20th to the 20th, the date on which the Regulation was fully effective.

Therefore, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing of personal data carried out by the Professional Institute for commercial and tourist services "G. Ravizza "of Novara, for having disclosed the complainant's personal data also regarding health data XX. This documentation was published on the site from the 20th to the 20th, the day on which it was removed following a report by the interested parties.

The violation of the aforementioned provisions makes the administrative sanction provided for by art. 83, par. 5, of the Regulations, as also referred to by art. 166, paragraph 2, of the Code.

In this context, considering, in any case, that the conduct has exhausted its effects, given that the publication of the documentation, containing the data of the complainant and her family members, on the website of the Institute has ceased, the conditions for the adoption of further 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 and ancillary sanctions (articles 58, par. 2, lett. l and 83 of the Regulation; art. 166, paragraph 7, of the Code).

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the Regulations as well as art. 166 of the Code, has the power to "inflict an administrative pecuniary 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 single case "and, in this context," the College [of the Guarantor] adopts the injunction order, with which it also disposes with regard to the application of the ancillary administrative sanction of its publication, in whole or in excerpt, on the website of the Guarantor pursuant to Article 166, paragraph 7, of the Code "(Article 16, paragraph 1, of the Guarantor Regulation no. 1/2019).

In this regard, taking into account art. 83, par. 3, of the Regulation, in the present case - also considering the reference contained in art. 166, paragraph 2, of the Code - the violation of the aforementioned provisions is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the Regulation.

The aforementioned administrative fine imposed, depending on the circumstances of each individual case, must be determined in the amount taking into account the elements provided for by art. 83, par. 2, of the Regulation.

In relation to the aforementioned elements, it was considered that the detected conduct, held in violation of the regulations on the protection of personal data, had as its object the dissemination of personal data, also in light of the indications that, since 2014, the Guarantor, has provided all public entities in the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purposes of advertising and transparency on the web by public entities and other obliged entities" mentioned above. This disclosure of personal data lasted for about a month

On the other hand, it was favorably acknowledged that the Institute acted immediately to remove the erroneously published documentation, for which the exhibition lasted for a small period of time, and immediately collaborated with this Authority, admitting the error committed and that there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the financial penalty in the amount of € 2,000.00 (two thousand) for the violation of Articles 5, paragraph 1, lett. a) and c), 6, paragraph 1, lett. c) and e) and 2 and 3, lett. b) and 9 par. 4 of the Regulations, as well as art. 2-ter, paragraphs 1 and 3 and 2-septies paragraph 8 of the Code, as an administrative pecuniary sanction, pursuant to art. 83, paragraph 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account the period of time during which the aforementioned data were available online, it is also believed that the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019.

Finally, it is noted that the conditions set out in art. 17 of Regulation no. 1/2019.

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1, lett. f), of the Regulations, declares unlawful the conduct held by the Professional Institute for commercial and tourist services "G. Ravizza "of Novara, described in the terms set out in the motivation, consisting in the violation of articles 5, 6 and 9 of the Regulation and of the articles 2-ter and 2-septies of the Code, in the terms set out in the motivation;

ORDER

To the Professional Institute for commercial and tourist services "G. Ravizza "of Novara, in the person of the pro-tempore legal representative, with registered office B.do M. D'Azeglio, 3 - 28100 Novara, C.F. 80015680038, pursuant to articles 58, par. 2, lett. i), and 83, par. 5, of the Regulation and 166, paragraph 2, of the Code, to pay the sum of € 2,000.00 (two thousand) as a pecuniary administrative sanction for the violations indicated in the motivation;

INJUNCES

the aforementioned Institute to pay the sum of 2,000.00 (two thousand) euros according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the l. n. 689/1981. In this regard, it is recalled that the offender has the right to settle the dispute by paying - again according to the methods indicated in the annex - of an amount equal to half of the sanction imposed, within 30 days from the date of notification of this provision, pursuant to art. 166, paragraph 8, of the Code (see also Article 10, paragraph 3, of Legislative Decree no. 150 of 1/9/2011);

HAS

pursuant to art. 166, paragraph 7, of the Code, the publication of this provision on the website of the Guarantor, considering that the conditions set out in art. 17 of the Guarantor Regulation n. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

Pursuant to art. 78 of the Regulation, 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision, it is possible to appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the applicant resides abroad.

Rome, June 24, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei