

Injunction order against the Municipality of Misterbianco - 28 February 2019

Register of measures

no. 51 of 28 February 2019

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, in the presence of Dr. Antonello Soro, president, of dr. Augusta Iannini, vice president, of prof. Licia Califano, member and of dr. 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, with deed no. 35125/87782 of 3 December 2014 (notified on the same date by certified e-mail), which must be understood as fully reported here, contested the Municipality of Misterbianco (hereinafter "the Municipality" or "the Body"), in the person of the lawyer pro-tempore representative, with registered office in Misterbianco (CT), Town Hall, via S. Antonio Abate, Tax Code 80006270872, the violation provided for by articles 19, paragraph 3, 162, paragraph 2-bis, and 167 of the Code regarding the protection of personal data (legislative decree 30 June 2003, n. 196, hereinafter the "Code") in the formulation prior to the amendments introduced by the legislative decree . lg. no. 101/2018;

NOTING that from the examination of the documents of the sanctioning procedure initiated with the contestation of administrative violation, the following emerged, in summary:

- on 11 July 2013, the Authority received a report complaining of an unlawful processing of personal data by the Municipality of Misterbianco in relation to the publication on the website of the Authority, in the section relating to the online Praetorian Register line (for a period longer than 15 days pursuant to art. 124, paragraph 1, of Legislative Decree no. 267/2000) of some council resolutions in which the personal data of the whistleblower were reported;
 - with reference to this publication, the Municipality of Misterbianco, with note no. 37789 of 2 September 2014, represented that "the resolutions of the Giunta subject to dispute [...] were published reporting only the surname and name of the opposing party to whom the Municipality appeared in court, without any indication of data and information of the reporting party. [...]
- Conversely, the publicity of the documents is required by several obligations: it is a prerequisite for the effectiveness of the document pursuant to art. 124 of Legislative Decree 267/2000; it is an expression of communication of the administrative

activity according to the provisions of law 150/00; pursues Transparency purposes pursuant to Legislative Decree 33/2014”;

- at the conclusion of the investigation into the case, the Department of Public Liberties and Health of the Guarantor's Office communicated to the parties that "in the state of the documentation examined, the legislation in force and having taken account of the statements provided, this Department [has] found a conduct not compliant with the applicable regulations – as personal data has been disseminated on the web beyond the 15-day period set by Legislative Decree Legislative Decree 267/2000 and, therefore, in the absence of a suitable regulatory prerequisite (art. 19, paragraph 3, of the Code)”;

- on the basis of the documents of the proceeding, the Office contested the violation of Articles 19, paragraph 3, 162, paragraph 2-bis, and 167 of the Code, for having disseminated personal data in the absence of suitable legal bases;

NOTING that with the aforementioned deed of 3 December 2014 the aforementioned violation was contested against the Municipality of Misterbianco;

HAVING ACKNOWLEDGED that the company has not made the reduced payment, as evidenced by the report drawn up pursuant to art. 17 of the law n. 689/1981;

READ the written defense dated 22 January 2015 and 30 January 2019, the latter sent on the basis of the provisions of art. 18, paragraph 4, of Legislative Decree lg. no. 101/2018, as well as the minutes of the hearing of 15 June 2015, in which it is represented that:

- "the publication subject to dispute, in addition to being permitted by the legislation on transparency, and in particular by art. 23 of Legislative Decree 33/2013 as well as by art. 124 Legislative Decree 267/2000, took place in compliance with the publication obligations incumbent on local authorities in the Sicilian Region. [...] For the purposes of compliance with the publication obligation prescribed by art. 18 Regional Law 22/2008, the content of the deed consists not only of the numerical and chronological references and of the object, but also of its dispositive part. [...] Furthermore, the provisions of the Code are also fully complied with, taking into account that the data reported in the Resolution were those strictly necessary to identify the essential content of the deed [...]. Without withdrawal from all the above observations, in the unfearful hypothesis that this Guarantor should deem the disputed violation to exist, in any case the exemption of the excusable error must be recognized, in consideration of the extreme difficulty in interpreting and coordinating the regulations they followed on the one hand in terms of transparency and anti-corruption, and on the other to protect privacy”;

HAVING ACKNOWLEDGED that the arguments put forward by the Municipality of Misterbianco are not suitable for

determining the closure of the sanctioning procedure initiated with the dispute of administrative violation for the following reasons:

- first of all, it must be noted that the disputed resolutions have been published in the section of the website of the Entity used as an online praetorian register. For the publication of the documents in this section, the provisions of art. 124, paragraph 1, of Legislative Decree lg. no. 267/2000, which expressly establishes that "all the resolutions of the municipality and the province are published by publication on the praetorian register, at the headquarters of the institution, for fifteen consecutive days, except for specific provisions of the law";
- the law referred to by the Municipality of Misterbianco, i.e. art. 18 of the Sicilian regional law n. 22/2008, establishes that "the municipal and provincial administrations are obliged, without prejudice to the provisions for the protection of privacy, to disclose, in extract, on the respective website all the deliberative acts adopted by the junta and the council and the union decisions and executives, for the purpose of publicizing the news";
- from reading the aforementioned regulatory texts, the obligation to publish in the praetorian register coincides with that indicated by art. 18 of the Sicilian regional law n. 22/2008, which establishes nothing regarding the terms of publication which therefore remain fixed by national legislation;
- the art. 18 of the Sicilian regional law also contains an express reference to the "provisions for the protection of privacy" which in the case in question have been fully framed, also in order to avoid interpretative errors of the overall regulatory framework, in 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 entities (provision n. 243 of 15 May 2014, in www.gpdp.it, web doc. n. 3134436);
- the aforementioned guidelines, in this regard, highlight that "once the time period established by the individual disciplines for the publication of the deeds and documents in the praetorian register has elapsed, the local authorities cannot continue to disseminate the personal data contained therein. Otherwise, for the period exceeding the duration envisaged by the reference legislation, there would be an illicit disclosure of personal data because it is not supported by suitable regulatory conditions (art. 19, paragraph 3, of the Code). This, except that the same deeds and documents must not be published in compliance with the obligations regarding transparency "
- in the case in question, given that the publication envisaged by art. 18 of the Sicilian regional law n. 22/2008 has the

exclusive purpose of publicizing the news, there were no regulatory conditions, based on the above survey, to extend the time limits for the publication of the resolutions subject to reporting beyond the 15 days envisaged by art. 124, paragraph 1, of Legislative Decree lg. no. 267/2000;

- it appears from the deeds that the resolutions subject to reporting were published on the site of the Municipality of Misterbianco in the years 2011 and 2012 and were still present in the month of July 2014;

- in the case in question, the publication, and therefore the dissemination of the whistleblower's personal data, lasted for a period well in excess of the prescribed 15 days and, for this reason, the responsibility of the Municipality of Misterbianco must be confirmed for the disputed violation;

NOTING, therefore, that the Municipality of Misterbianco, on the basis of the above deeds and considerations, appears to have committed, in its capacity as data controller, pursuant to articles 4, paragraph 1, lett. f), and 28 of the Code, the violation indicated in the notice of dispute no. 35125/87782 of 3 December 2014;

CONSIDERING the art. 162, paragraph 2-bis, of the Code (in the formulation prior to the amendments introduced by Legislative Decree no. 101/2018) which punishes violations of the provisions indicated in art. 167 of the Code, which also includes art. 19, with the administrative sanction of the payment of a sum from Euro 10,000 to Euro 120,000;

CONSIDERING that, in the case in question, the decrease referred to in art. 164-bis, paragraph 1, of the Code, which provides for the reduction to two-fifths of the statutory limits of the sanction in less serious cases;

WHEREAS, for the purpose of determining the amount of the fine, it is necessary to take into account, pursuant to art. 11 of the law n. 689/1981, of the work carried out by the agent to eliminate or mitigate the consequences of the violation, the seriousness of the violation, the personality and economic conditions of the offender;

WHEREAS, in the present case:

to. with regard to the aspect of gravity, with reference to the elements of the extent of the injury or danger and the intensity of the psychological element, the violation is not characterized by profiles of gravity;

b. for the purpose of evaluating the work carried out by the agent, the fact that the Municipality of Misterbianco, already during the preliminary investigation, has taken steps to remove the resolutions subject to reporting from the section of the praetorian register on line of its corporate website;

c. regarding the personality of the perpetrator of the violation, the fact that the Entity is not burdened by previous sanctioning

proceedings defined briefly or following an injunction order must be considered;

CONSIDERED, therefore, of having to determine, pursuant to art. 11 of the law n. 689/1981, the amount of the pecuniary sanction, on the basis of the aforementioned elements evaluated as a whole, in the amount of Euro 4,000.00 (four thousand), withheld as the decreasing amount pursuant to art. 164-bis, paragraph 1, of the Code;

HAVING REGARD to the documentation in the deeds;

CONSIDERING the law n. 689/1981, and subsequent modifications and additions;

GIVEN the observations of the Office formulated by the Secretary General pursuant to art. 15 of the Guarantor's regulation n. 1/2000, adopted with resolution of 28 June 2000;

SPEAKER Prof. Licia Califano;

ORDER

to the Municipality of Misterbianco, in the person of its pro-tempore legal representative, with registered office in Misterbianco (CT), Town Hall, via S. Antonio Abate, Tax Code 80006270872, to pay the sum of 4,000.00 (four thousand) euros as an administrative fine for the violation indicated in the justification;

ENJOYS

to the aforementioned Body 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 adopting 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, 28 February 2019

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia