

Injunction order against Ministry of Education, University and Research–Regional Scholastic Office for Lombardy–Office
III–Lombardy Territorial Area - 13 December 2018

Register of measures

no. 508 of 13 December 2018

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

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

NOTING that the Office of the Guarantor, with deed no. 21890/124763 of 20 July 2018 (notified on the same date by certified
e-mail), which must be understood as fully reported here, contested the Ministry of Education, University and Research -
Regional School Office for Lombardy - Office III - Territorial area of Bergamo (hereinafter "Miur Lombardia-Bergamo" or
"Body"), with registered office in Bergamo, via Pradello n. 12, tax code 80031070164, 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 referred to as the "Code", in the formulation prior to the amendments introduced by the legislative
decree . lg. n. 4 September 2018, n. 101 in force since 19 September 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:

- with a note dated 28 May 2018, the Public Affairs Department of the Guarantor's Office communicated the results of the
investigation launched following a complaint concerning the disclosure of an employee's personal data through publication on
14 February to the Miur Lombardia-Bergamo 2018, of two notes, subsequently removed, on the institution's institutional
website. The personal information published on the site related to the adoption of the disciplinary sanction of dismissal for
persistent insufficient performance, against the complainant;
- in the aforementioned note, the Public Realities Department highlighted that "online publication involving the dissemination of
personal data [...] can be lawfully carried out only when this operation is provided for by a law or regulation [...]" and that

"previously upon removal from the institutional site, the publication of the notes in question has led to an illegal dissemination of personal data as it was carried out in the absence of an appropriate regulatory basis";

- the Office therefore adopted the notification of administrative violation indicated in the epigraph;

NOTING that with the aforementioned deed dated 20 July 2018 the Miur Lombardia-Bergamo was charged with violating the provisions of articles 19, paragraph 3, 162, paragraph 2-bis and 167 of the Code;

HAVING ACKNOWLEDGED that the Entity 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 of 9 August 2018, in which it is represented that:

- "preliminarily, it is necessary to inform your Dear Authorities that the material authors who ordered the publication of the document in question on the website of Office III of the TA of Bergamo are: Ms [...] , who with his own and autonomous e-mail [...] requested the publication of note no. 861/2018 to the IT Service of Office III; Mr. [...], materially proceeded with the publication of the same. For any further assessment it should be noted that the aforementioned "publication" occurred as a result of an autonomous and isolated action by the two natural persons involved and certainly not as an act deriving from the adoption of a procedural protocol by this administrative office".

- "as already briefly reported in the narration of the facts, the cancellation of the name of the [complainant] both from the permanent ranking (so-called "24 months") and from the rankings of the Club and Institute of personnel A.T.A. of the school, as a result of the disciplinary sanction of dismissal for persistent and insufficient performance, is envisaged by the sector legislation - see the aforementioned notices - which does not allow those who have undergone a disciplinary measure of an expulsive nature to be able to participate in the recruitment procedures. In the light of the foregoing, it can be confirmed that the communication/dissemination of the data is considered supported by sector legislation as required by art. 19, paragraph 3 of Legislative Decree 196/2003. If this were not the case, the worker himself could not only ask to be registered in the rankings of another province of the national territory but, even, be identified again as the recipient of a proposal for a fixed-term employment contract, essentially canceling the action discipline put in place by the Administration as well as the very value of the legislation just mentioned. In this perspective, it should be borne in mind that the rankings are published on the Internet site of the Office, so that it might not be inappropriate for the names excluded from the same rankings to be made known by the same means to the interested parties (both other schools, and the other workers registered in the same ranking and interested

in the "scroll"). This could, for certain purposes, be compliant with the principles established by art. 53 of Legislative Decree 07/03/2005, no. 82 (Digital Administration Code) and could in any case facilitate the downsizing of the seriousness of the alleged infringement reported”;

HAVING ACKNOWLEDGED that the arguments put forward by Miur Lombardia-Bergamo are not suitable for determining the closure of the sanctioning procedure started with the dispute of administrative violation for the following reasons:

- firstly, the indication of the employees who would have materially proceeded with the publication request and with the effective publication of the notes containing the complainant's personal data appears completely irrelevant given that the Entity, data controller, has not demonstrated that the the aforementioned employees have acted in contravention of specific instructions given by the same owner and evading the direct authority and supervision of the same;
- furthermore, it should be reiterated that no industry standard (nor the notices relating to the temporary placement of ATA personnel) allows for the dissemination of employee personal data via the Internet, with particular reference to the indication of disciplinary sanctions of an expulsive nature that they can deploy effects on placement rankings;
- lastly, with reference to the need to provide for the communication of the disciplinary measure adopted against the complainant to all the subjects who could have used the ranking in which the same complainant was inserted, it must be highlighted that the use of individualized letters or circulars to all the offices concerned would have allowed the Miur Lombardia-Bergamo to effectively implement the above disciplinary measure without carrying out an indiscriminate and illegitimate dissemination of the complainant's personal data;
- the Entity's responsibility for the disputed violation must therefore be confirmed.

NOTING, therefore, that the Miur Lombardia-Bergamo, on the basis of the above deeds and considerations, appears to have committed, in its capacity as data controller, the violation indicated in the notice of dispute no. 21890/124763 of 20 July 2018;

CONSIDERING the art. 162, paragraph 2-bis, of the Code (in the formulation in force at the material time) which punishes the violation of the provisions indicated in art. 167, among which the art. 19, paragraph 3, with the administrative sanction of payment of a sum from 10,000 to 120,000 euros;

CONSIDERING that, for the purposes of determining the amount of the pecuniary sanction, it is necessary to take into account, pursuant to art. 11 of the law 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 violations are not characterized by profiles of gravity;

b. for the purpose of evaluating the work carried out by the agent, it must be noted that the Miur Lombardia-Bergamo has actually removed the notes that are the subject of the complaint;

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;

CONSIDERING that the conditions for applying art. 164-bis, paragraph 1, of the Code which provides that if any of the violations referred to in art. 161, 162-ter, 163 and 164 is less serious, the minimum and maximum limits established in the same articles are applied in an amount equal to two fifths;

CONSIDERED, therefore, of having to determine, pursuant to art. 11 of Law no. 689/1981, the amount of the pecuniary sanction, on the basis of the aforementioned elements evaluated as a whole, to the extent of the statutory minimum for the violation pursuant to art. 162, paragraph 2-bis, of the Code (10,000 euros) and that, in the case in question, the deduction referred to in art. 164-bis, paragraph 1, due to the minor extent of the violation and the collaborative behavior of the offender, to reach a final amount of 4,000 (four thousand) euros;

HAVING REGARD to the documentation in the deeds;

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

HAVING REGARD TO the observations made by the general secretary 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 Ministry of Education, University and Research - Regional Scholastic Office for Lombardy - Office III - Territorial area of Bergamo, with registered office in Bergamo, via Pradello n. 12, tax code 80031070164, to pay the sum of 4,000 (four thousand) euros as an administrative fine for the violations indicated in the justification;

ENJOYS

to the aforementioned Administration to pay the sum of 4,000 (four thousand) euros, according to the methods indicated in the

attachment, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the law of 24 November 1981, n. 689.

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

Rome, 13 December 2018

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia