

[doc. web no. 9100724]

Injunction order against the "Andrea Mantegna" High School Institute - 31 January 2019

Register of measures

no. 37 of 31 January 2019

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 law n. 689/1981 and subsequent amendments and additions;

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

GIVEN the anonymous report of 11 November 2017 concerning the publication on the institutional website of the "Andrea Mantegna" Higher Education Institute located in Brescia, Via Fura 96, (hereinafter the "Institute") of some rankings concerning the teaching staff, containing, among other personal data, such as the tax code, also data suitable for revealing the state of health of the interested parties;

GIVEN the note requesting information signed by the Department of Public Liberties and Health prot. no. 0005754 of 19 February 2018, addressed to the Institute;

GIVEN the reply note sent to the Guarantor on 13 March 2018, with which the Institute reported that at the time of receipt of the aforementioned note from the Guarantor dated 19 February 2018 "(...) the aforementioned rankings were no longer available on the website website of the Institute (...)"; in fact, "(...) the provisional rankings of 2nd and 3rd band of academic staff aa.ss. 2017/2020 were actually published on the Institute's website on 21 August 2017, but on 2 February 2018, following the communication from the UST of remission of the rankings due to some corrections, the same were replaced by the definitive correct ones, currently available for online consultation (...)". Furthermore, the fact that the published file contained "(...) the indication, among the preferences, of the letter S in the category of maimed and disabled civilians (...) is the result of a mere clerical error by the administrative employee who provided the file to the teacher which published it on the Institute's website (...)";

HAVING REGARD to the note from the Department of Public Liberties and Health prot. n.15841/122219 of 24 May 2018 with

which the Guarantor, having ascertained the existence of an unlawful processing of personal data carried out by the Institute with the dissemination, through publication on the institutional website, of data suitable for revealing the state of health of the teaching staff, at the end of the preliminary investigation procedure, communicated to the Institute that, despite having found a conduct that does not comply with the regulations on the protection of personal data, it has not, however, identified the grounds for promoting the adoption of a prescriptive or injunctive measure of the College, pursuant to art. 11, paragraph 1, letter d and 13, paragraph 4, of the internal regulation n. 1/2007 of 14 December 2007 (web doc. n. 1477480 which can be found at www.garanteprivacy.it); this, in consideration of the fact that this conduct had exhausted its effects as the rankings containing the data suitable for revealing the state of health of the teachers were no longer accessible on the Institute's website and it being understood that the Office, on the basis of the documents of the investigation, in relation to the aforesaid conduct not compliant with the regulations applicable at the time of the report, in any case reserved the right "(...) to verify the conditions for contesting the relative administrative violation with a possible independent sanctioning procedure";

GIVEN the note prot. no. 16123/122219 of 28 May 2018 with which the Department of Public Liberties and Health sent the documents to the Department of Inspection Activities so that it could evaluate the conditions for the application of the administrative sanction referred to in article 162, paragraph 2-bis, of the Legislative Decree . 196/2003 containing the "Code regarding the protection of personal data" (hereinafter "Code") in relation to the successful dissemination of data suitable for revealing the state of health of the Institute's teaching staff;

HAVING REGARD to the notification prot. no. 21318/122219 of 16 July 2018 with which the Guarantor contested the violation of the provision referred to in article 22, paragraph 8 of the Code sanctioned by article 162 of the "Andrea Mantegna" Higher School, with registered office in Brescia , paragraph 2-bis of the same Code, for having disseminated data suitable for revealing the state of health of the Institute's teaching staff via the institutional website and thus carrying out an unlawful processing of personal data;

NOTING that from the administrative report prot. no. 30823/122219 of 18 October 2018, prepared by the Office of the Guarantor pursuant to art. 17 of the law of 24 November 1981 n. 689, the reduced payment pursuant to art. 16 of law 689/81;

GIVEN the defense brief, presented pursuant to article 16 of the law of 24 November 1981 n. 689, with which the Institute highlighted that the publication on the institutional website of the file relating to the provisional rankings of 2nd and 3rd band of teaching staff for the 2017/2020 school years, containing the teachers' tax code and the indications among the preferences of

the letter S, "(...) is undoubtedly the result of a mere material error and the result of an isolated chain of unfortunate coincidences (...)" determined by the absence, for holidays, of the administrative staff in charge to this type of publication. The Institute also highlighted how this story arose from a report that remained anonymous and, therefore, not so much aimed at complaining about the unlawful processing of personal data, but at damaging the Institute's image. Lastly, the party was also keen to highlight how it made timely efforts, even before the findings raised by the Guarantor, to remove the non-compliance, putting in place all useful actions to prevent the recurrence of the "(...) unfortunate circumstance (...)".

HAVING REGARD TO the minutes of the hearing of the parties which took place on 30 October 2018 with which the Institute of Education, in fully recalling the defense briefs already presented, also underlined how "(...) the connection found to be active by the Guarantor was in reality inaccessible by subjects third parties who were not exactly informed of the link to be identified (...)" on the site, as well as highlighting the speed used to remedy the criticality in question even before the checks carried out and the findings raised by the Guarantor;

CONSIDERING that the arguments put forward by the Institute are not suitable to accept the requests formulated in the defense brief.

In fact, with reference to the "(...) clerical error (and the) chain of unfortunate coincidences (...)" involving the Institute's good faith, it should be noted that according to consolidated jurisprudence it is necessary that such good faith or, in terms of referred to in art. 3 of law 689/1981, the error, in order to be excusable, is based on a positive element, extraneous to the agent and capable of determining in him the conviction of the legitimacy of his behaviour. This positive element must not be remediable by the interested party with the use of ordinary diligence. The Institute, as data controller, was diligently required to know and fulfill the obligations required by the applicable legislation in the matter in question, also due to the fact that, in relation to the performance of ordinary institutional functions, it was required to find out about the applicable rules and their interpretation.

NOTING that, on the basis of the considerations referred to above, the Institute, in the person of its pro-tempore legal representative, as data controller pursuant to art. 4, paragraph 1, lett. f), and 28 of the Code, is found to have committed a violation of the provision pursuant to art. 22, paragraph 8, of the Code sanctioned by art. 162, paragraph 2-bis, of the same Code, for having carried out an unlawful processing of personal data through the dissemination of data suitable for revealing the state of health of the teaching staff on the institutional website, as specified above;

CONSIDERING the art. 162, paragraph 2-bis of the Code, which punishes the violations indicated in art. 167, including the

violation relating to art. 22, paragraph 8, of the same Code with the administrative sanction of payment of a sum ranging from 10,000.00 (ten thousand) to 120,000.00 (one hundred and twenty thousand) euros;

WHEREAS, for the purposes of determining the amount of the fine, it is necessary to take into account, pursuant to art. 11 of the law of 24 November 1981, n. 689, 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;

NOTING that the Institute, in the defense brief of August 13, 2018, declared that it had "promptly acted" even before the findings raised by the Guarantor to remove the non-compliance;

also NOTING, as regards the seriousness of the conduct, that the unlawfulness of the processing is achieved only through an operation of combination between the letter "S" indicated in the ranking and the Decree of the Ministry of Education, University and Research of 1 April 2014, no. 235 which brings this letter back to the category of "civil invalids";

CONSIDERING, as regards the offender's personality and his economic conditions, that it is a public school which carries out important institutional activities in very modest economic conditions;

CONSIDERING that, for these reasons, the present case can be traced back, despite the particular nature of the data processed, to the hypothesis of lesser gravity referred to in article 164-bis, paragraph 1, of the Code and that therefore the amount of the pecuniary sanction provided for by art. 162, paragraph 2-bis of the Code must be quantified in the minimum amount of Euro 4,000.00 (four thousand) for the violation of art. 22, paragraph 8, of the same Code;

HAVING REGARD to the documentation in the deeds;

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 Dr. Giovanna Bianchi Clerici;

ORDER

to the Istituto Scolastico Superiore "Andrea Mantegna", with registered office in Brescia, to pay the sum of 4,000.00 (four thousand) euros as a pecuniary administrative fine for the violation of the provision referred to in article 22, paragraph 8, of the Code sanctioned by article 162, paragraph 2-bis of the same Code, for having disseminated data suitable for revealing the state of health of the Institute's teaching staff via the institutional website and thus carrying out an illicit treatment of personal data;

ENJOYS

to the same Institute 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, 31 January 2019

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

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