[doc. web n. 9789541]

Injunction order against Agricultural University of Neptune - May 26, 2022

Record of measures

n. 196 of 26 May 2022

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 dr. Claudio Filippi, Deputy Secretary General;

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 4/4/2019, published in the Official Gazette n. 106 of 8/5/2019 and in www.gpdp.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. The complaint.

With a complaint submitted pursuant to art. 77 of the Regulations, the publication, on the website of the Agricultural University of Nettuno (hereinafter, the "Entity"), of resolution XX, concerning the "Legal assignment of the dispute [name and surname of

the complainant], with which was appointed to a law firm "for the promotion of the lawsuit aimed at recovering the pay differences received by the Extraordinary Ex Commissioner [or the complainant]".

The publication of the resolution in question and its indexing on the aforementioned search engine were ascertained by the Office (see service reports in the documents).

The complainant also stated that, after having reported the incident to the Entity, the latter would have communicated "that [...] pursuant to EU Regulation 2016/679, no injury or violation has been committed [... since] the the aforementioned provision only bears the name and surname [of the complainant, personal data] not included among the sensitive data submitted to the protection of the Regulation ".

2. The preliminary activity.

On the basis of the elements acquired, the verifications carried out and the facts that emerged as a result of the investigation, the Office notified the Entity, 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 5, par. 1, lett. a) and c), 6, paragraph 1, lett. c) and e), 2 and 3, lett. b), and 37 of the Regulations, as well as art. 2-ter, paragraphs 1 and 3 of the Code (in the text prior to the changes made by Legislative Decree 8 October 2021, n.139, in force at the time of the facts subject of the complaint), inviting the aforementioned 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, as well as art. 18, paragraph 1, of the l. 24 November 1981, n. 689).

The Entity sent its defense briefs, representing, in particular, that:

- "the [Entity] is a subject established by state law for the management and maintenance of the community's assets and so-called civic use assets which, within the scope of institutional competences and in collaboration with the Municipality of Nettuno, carries out administrative functions in the agricultural and livestock sectors relating to land use and economic development ";

- "in consideration of the purposes of public interest pursued, the [Entity] is required to comply, among other things, with the provisions on supervision and control of the Court of Auditors referred to in Legislative Decree n. 453 of 1993 converted into Law no. 19 of 1994, as well as the principles of transparency referred to in Article 15 of Legislative Decree no. 33 of 2013 as amended by Legislative Decree 97 of 2016 ";

- "given the need to comply with the aforementioned supervisory and control provisions of the Court of Auditors, the [Body] was thus forced to take action for the recovery of the debt against the former Extraordinary Commissioner, [...] undertaking legal action before the Court of Velletri, Labor Section ";

- "in order to ground the aforementioned judgment, and in compliance with the aforementioned principles of transparency, with resolution XX the [Body] [...] arranged for the appointment of the professional indicated therein";

- "Always in compliance with the aforementioned principles of transparency, the [Body] published this resolution on its institutional website, pursuant to and for the purposes of art. 15 of Legislative Decree No. 33 of 2013 ";

- "in the aforementioned resolution the amount of professional remuneration allocated to the lawyer in charge of the undue recovery action was specified [...] and, precisely to justify this disbursement also in consideration of the supervisory and control powers of the Court of Conti the petitum of the judgment was made explicit for which, with said resolution, the task was conferred on the external professional ";

- "in this context, the indication contained in the aforementioned resolution [...] rather constitutes the judicial prospect of the [Entity] that it was necessary to make explicit in the resolution precisely in order to justify, in the eyes of the Court of Auditors and in compliance with the principles of transparency mentioned above, the provision of a professional remuneration that was proportionate to the quantum requested ";

- “the resolution does not contain“ particular ”data or“ relating to criminal convictions and offenses ”pursuant to art. 9 and 10 of EU Regulation 2016/679 ";

- "it is believed that the alleged violation of Article 37 was not committed in the present case [... as] the [Entity] is neither a public authority nor a public body, but an entity established by state law which, to date, is now a legal entity under private law; [...] the activities of the [Entity] do not require regular and systematic monitoring of the data subjects on a large scale; […] the main activity of the [Entity] does not it certainly consists in the processing of particular categories of personal data referred to in Article 9 or data relating to crimes referred to in Article 10 ".

3. Outcome of the preliminary investigation.

3.1 Assumptions of lawfulness of the processing of personal data by the Entity.

Preliminarily, it is noted that, although the owner has declared that he is not "a public authority nor a public body, but an entity established by state law which, to date, is now a legal entity under private law", the Entity is was established by law for the

management and maintenance of the community's assets, or the so-called assets of civic use, and the purposes of public interest pursued are indicated by art. 142, paragraph 1, lett. h) of the legislative decree 22 January 2004, n. 42 ("Code of cultural heritage and landscape"), which considers as areas protected by law, "the areas assigned to agricultural universities and areas burdened by civic uses", making the so-called assets of civic use. These assets, however, find protection of constitutional rank, as they are included in the scope of application of art. 9, paragraph 2, of the Constitution, relating to the protection of the landscape (see sentence of the Constitutional Court n. 210 of 28 May 1987).

For this reason, considering that the regulatory framework on data protection provided by the Regulation, which does not regulate a different regime applicable to public and private subjects, takes into account only the functional profile in the processing of data, it is considered that, given the pursuit of a public interest by the Entity, the related processing of personal data can be considered lawful if necessary "to fulfill a legal obligation to which the data controller is subject" or "for the execution of a task of public interest or connected to the exercise of public powers "(art. 6, par. 1, lett. c) and e), and, with regard to particular categories of data, art. 9, lett. g), of the Regulation).

3.2 The dissemination of personal data.

European legislation provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of this Regulation with regard to processing, in accordance with paragraph 1, letters c) and e), by determining more precisely specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing […] "(Article 6, par. 2, of the Regulation). In this regard, it should be noted that the operation of "dissemination" of personal data (such as online publication), by public bodies or other subjects carrying out tasks of public interest, is permitted only when provided for by a law or , in the cases provided for by law, regulations (see Article 2-ter, paragraphs 1 and 3 of the Code, in the text prior to the changes made by Legislative Decree No. 139 of 8 October 2021, in force at the time of the facts subject of the complaint) .

In this context, the data controller is in any case 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 a 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 "(art. 5, par. 1, lett. a) and c) of the Regulation).

Given the notion of "personal data" referred to in art. 4, par. 1, no. 1, of the Regulation ("any information concerning an

identified or identifiable natural person"), having to consider "identifiable the natural person who can be identified, directly or indirectly with particular reference to an identifier such as the name [...]", in the case of especially the resolution, although not containing data belonging to particular categories, identifies the complainant, by means of his / her name and surname, in reference to a dispute between the Entity and the complainant, for the recovery of sums received by the same during the period in which he carried out the activity of Commissioner of the Entity. For these reasons, contrary to the owner's contention, the deed to be published contains personal data and consequently the rules on the protection of personal data apply.

With reference to the fact that the Entity was required, pursuant to art. 15 of the legislative decree n. 33/2013, upon the publication of the resolution relating to the appointment of the professional, for the purpose of transparency, it is noted that already in the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for of advertising and transparency on the web by public entities and other obliged entities "(published in the Official Gazette no. 134 of 12 June 2014 and in www.gpdp.it, web doc. no. 3134436, second part, paragraphs 1 and 3 (a)) the Guarantor has clarified that, even in the presence of a law providing for the publication of deeds and documents of the public administration - which in any case must be respected also with regard to the period of publication established by this - they must be, however, respected the principles of data protection (Article 5 of the Regulation), especially "when the purposes pursued in individual cases can be achieved through anonymous data or other methods that allow identify the interested party only in case of need "(cfr. among others prov. 16 September 2021, n. 321, doc. web n. 9718196; prov. 16 September 2021, n. 319, doc. web n. 9704048; prov. 16 September 2021, n. 318, doc. web n. 9718134; prov. June 24, 2021, n. 256, doc. web n. 9689607; prov. June 24, 2021, n. 255, doc. web n. 9686899).

These considerations also apply to the obligations deriving from art. 15 of Legislative Decree 33/2013, invoked by the Entity to justify the publication of the resolution in question (see Article 5, paragraph 1, letter a) and c), of the Regulation). The publication of the deed in question, devoid of any reference that could even indirectly allow the identification of the complainant, would not, however, compromise either the correct fulfillment of the legal obligation in question or the principle of adequate motivation (Article 3 of Law 241/1990), since the full version of the deed would have remained, in any case, in the deeds of the Entity and would have been accessible, by qualified persons, in the ways and within the limits established by law.

Therefore, even in the presence of the publication obligations pursuant to Legislative Decree no. 33/2013, the subjects called to implement it cannot in any case "make [...] intelligible personal data that are not relevant [...] with respect to the specific

purposes of transparency of the publication" (art. 7-bis, paragraph 4, of the legislative decree . n. 33/2013). In this case, in compliance with the regulatory framework for the sector, the Entity would therefore have had to publish "the details of the deed of assignment" to the professional (Article 15, paragraph 1, letter a) of Legislative Decree .lgs. n. 33/2013) without making any reference, not even indirectly, to the complainant (see provision no. 34 of 27 January 2021, web doc. No. 9549165 and ANAC determination no. 1310 of 28 December 2016, "First guidelines containing on the implementation of the obligations of publicity, transparency and dissemination of information contained in Legislative Decree 33/2013 as amended by Legislative Decree 97/2016 ").

In light of the foregoing considerations, it must be concluded that the Entity has put in place an unlawful disclosure of the complainant's personal data, in violation of Articles 5 and 6 of the Regulations, as well as 2-ter of the Code (in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021).

4. Conclusions.

In light of the aforementioned assessments, it is noted that the statements made by the data controller during the investigation the truthfulness of which one may be called to respond pursuant to art. 168 of the Code do not allow the findings notified by the Office to be overcome with the act of initiating the procedure and are insufficient to allow the filing of this proceeding, however, none of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

Therefore, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing of personal data carried out by the Entity is noted, for having disclosed personal data relating to the complainant, contained in Resolution XX, in the absence of suitable regulatory requirements, in violation of the art. 6 of the Regulations and Article 2-ter of the Code (in the text prior to the changes made by Legislative Decree 8 October 2021, no. 139), as well as the basic principles of processing contained in art. 5, par. 1, lett. a) and c) of the Regulations.

Instead, the filing of the violation profile relating to the failure to designate the data protection officer must be arranged, given that the Entity, while exercising a function under public law, has legal personality under private law (see Article 1 of the 168 of November 20, 2017), as none of the conditions referred to in art. 37 of the Regulation, in the presence of which the owner is required to designate a data protection officer (see, however, the recommendations contained in the "Guidelines on data protection officers" of the Article 29 Working Group, now European Committee for data protection, adopted on 13 December 2016 and amended on 5 April 2017, regarding the opportunity for private entities exercising public functions to appoint a

person responsible for the protection of personal data).

The violation of the aforementioned provisions makes the administrative sanction provided for by art. 83, par. 5, of the Regulation, pursuant to art. 58, par. 2, lett. i), and 83, par. 3, of the same Regulation and art. 166, paragraph 2, of the Code.

5. Adoption of corrective measures (art. 58, par. 2, letter f) of the Regulations).

The unlawful conduct conducted by the Entity has not completely exhausted its effects, as, to date, the Entity has not demonstrated that it has implemented adequate measures to ensure the effective obscuring of the complainant's personal data contained in the resolution no. 7 of 3 April 2019 published online.

Art. 58, par. 2, lett. f), of the Regulation provides that the Guarantor has the corrective powers to "impose a temporary or definitive limitation to processing, including the prohibition of processing".

In this context, it is considered necessary, due to the unlawfulness of the processing carried out, to have, pursuant to art. 58, par. 2, lett. f), the limitation of the treatments in progress by prohibiting the Entity from any further disclosure of the complainant's personal data.

Pursuant to art. 157 of the Code, the Entity will also have to communicate to this Authority the initiatives undertaken in order to implement the aforementioned order pursuant to the aforementioned art. 58, par. 2, lett. f) within thirty days of notification of this provision.

6. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (articles 58, par. 2, lett. I 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 complainant's personal data have been disseminated since 2019, despite the indications that, since 2014, the Guarantor has provided 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 ", cited above.

On the other hand, it was favorably taken into account that the violation concerned common data referring to a single interested party. 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 pecuniary sanction, in the amount of € 4,000 (four thousand) for the violation of Articles 5 and 6 of the Regulations, as well as 2-ter of the Code (in the text prior to the changes made by Legislative Decree 8 October 2021, no. 139), as a pecuniary administrative sanction, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account that the personal data of the complainant have been disseminated since 2019 and are still published online, it is also believed that the ancillary sanction of 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 given the continuing dissemination of data, the conditions set out in art. 17 of Regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

WHEREAS, THE GUARANTOR

notes, pursuant to art. 57, par. 1, lett. f), the unlawfulness of the processing carried out by the Agricultural University of Neptune, for violation of Articles 5 and 6 of the Regulations, as well as 2-ter and of the Code (in the text prior to the amendments made by Legislative Decree 8 October 2021, n.139), within the terms set out in the motivation;

ORDER

pursuant to art. 58, par. 2, lett. i), and 83 of the Regulations, as well as art. 166, paragraph 2, of the Code, at the Agricultural University of Nettuno, in the person of the pro-tempore legal representative, with registered office in Via Santa Barbara, 92 -

00048 Nettuno (Rome), Tax Code 02942060589, to pay the sum of € 4,000 (four thousand) as a fine for the violations indicated in the motivation. It is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within 30 days, an amount equal to half of the sanction imposed;

INJUNCES

at the Agricultural University of Neptune:

a) in the event of failure to settle the dispute, pursuant to art. 166, paragraph 8, of the Code, to pay the sum of € 4,000 (four thousand) 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;

b) pursuant to art. 58, par. 2, lett. f), the limitation of treatments in progress, prohibiting the Agricultural University of Neptune from any further online dissemination of the complainant's personal data contained in resolution no. 7 of 3 April 2019;

c) pursuant to art. 58, par. 1, lett. a), of the Regulation and 157 of the Code, to communicate to this Authority, providing an adequately documented feedback, within thirty days from the notification of this provision, the initiatives undertaken to ensure compliance of the treatment with the Regulation;

HAS

the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code (see Article 16 of the Guarantor Regulation No. 1/2019);

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lett. u), of the Regulations, violations and measures adopted in compliance with art. 58, par. 2, of the Regulation (see art.17 of the Guarantor Regulation no. 1/2019).

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, May 26, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE DEPUTY SECRETARY GENERAL

Philippi