

Injunction order - 23 May 2019

Register of measures

no. 118 of 23 May 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;

NOTING that the Office, with deed no. 543/99207 of 8 January 2019, which must be understood as fully reported here, notified on the same date to XX, born in XX, the XX, tax code XX, elect. dom.to c/o the lawyer's office XX, via XX, XX, the details of the violation pursuant to articles 33, 34 and 169 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 changes introduced by the legislative decree lg. no. 101/2018 (hereinafter the "Decree"), as well as pursuant to articles 24 and 25 of the same Decree;

NOTING that from the examination of the documents of the sanctioning procedure initiated with the adoption of the aforementioned one, the following emerged, in summary:

- on 5 March 2015, Ms XX filed a deed of complaint-complaint in which she represented that on 21 January 2014 she underwent a medical examination for the issue of certification of suitability for the competitive practice of underwater sports at the Centro Medoc s.r.l. of XX;
- following the release of the competitive sports certification, Ms XX underwent further health checks which made it necessary to acquire the stress electrocardiogram carried out at the Medoc center and the related health record;
- the requested documentation was never delivered to Ms XX. Subsequent investigations, also conducted through the Judicial Police section of the XX Public Prosecutor's Office, led to the conclusion that "what was legitimately requested by the XX has either been lost [...] or has been erroneously entered in another patient's medical record and scanned at name of the latter" (see annotation by the Public Prosecutor of 3 April 2015, page 2);
- the loss of the health documentation relating to the medical assessment carried out in relation to Ms XX, of which no trace was found either in paper or electronic format, is a circumstance suitable for constituting the violation envisaged by art. 169, paragraph 1, of the Code, for the failure to adopt the minimum security measures pursuant to articles 33, 34 and 35 of the

Code and rules nos. 18, 23, 28 and 29 of the technical specification referred to in annex B), since the failure to find the above documentation does not appear to have depended on unforeseeable circumstances or an excusable error by the owner, and therefore the same must be ascribed to vulnerability in the security of sensitive personal data with reference to the saving of the same on electronic media and their recovery as well as the custody, control and archiving of the aforementioned data in paper format;

- with reference to the criminal profiles envisaged by the repealed art. 169 of the Code, Mr. XX, in his capacity as sole director and medical director of Medoc s.r.l.;
- following the abrogation of art. 169 of the Code, the provisions of articles must apply. 24 and 25 of the Decree and, therefore, an administrative sanction must be imposed on the author of the violation, instead of the criminal one, within the limits established by art. 24, paragraph 3, of the Decree;

NOTING that with the aforementioned deed of 8 January 2019, pursuant to art. 25, paragraphs 5 and 6, of the Decree, to Mr. XX the details of the violation were notified with indication of the payment of a sum, by way of administrative fine, equal to 1,250 (one thousand two hundred and fifty) euros, and that the aforementioned offender was also allowed to define the sanctioning procedure within sixty days, with the payment of a sum equal to half of the fine imposed, i.e. 625 (six hundred and twenty-five) euros;

NOTING that Mr. XX did not proceed with the reduced payment;

HAVING ACKNOWLEDGED also that the same did not send written defenses nor did he ask to be heard by the Authority;

CONSIDERING therefore that it is necessary to confirm the amount of Euro 1,250 (one thousand two hundred and fifty) determined with the deed notified on 8 January 2019;

CONSIDERING the articles 24 and 25 of the Decree;

HAVING REGARD to the documentation in the deeds;

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 Dr. Giovanna Bianchi Clerici;

ORDER

in XX, born in XX, the XX, fiscal code XX, elect. dom.to c/o the lawyer's office XX, via XX, XX, to pay the sum of 1,250 (one

thousand two hundred and fifty) euros as an administrative fine for the violation indicated in the justification;

ENJOYS

to the aforementioned Mr. XX to pay the sum of 1,250 (one thousand two hundred and fifty) 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, 23 May 2019

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

Busia