

[doc. web n. 9718175]

Injunction order against the Provincial Health Authority of Cosenza - 16 September 2021

Record of measures

n. 326 of 16 September 2021

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 / EC, "General Data Protection Regulation" (hereinafter "RGPD");

GIVEN the d. lgs. June 30, 2003, n. 196 containing the "Code regarding the protection of personal data (hereinafter the " Code ");

GIVEN the general provision n. 243 of 15/5/2014 containing the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other obliged entities", published in the Official Gazette. n. 134 of 12/6/2014 and in www.gpdp.it, doc. web n. 3134436 (hereinafter "Guidelines on transparency");

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");

GIVEN the documentation in the deeds;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and operation of the office of the Guarantor for the protection of personal data, in www.gpdp.it, doc. web n. 1098801;

Speaker Dr. Agostino Ghiglia;

WHEREAS

1. Introduction

This Authority has received a complaint from Mr. XX (hereinafter "complainant"), with which a violation of the legislation on the protection of personal data by the Provincial Health Authority of Cosenza (A.S.P. Cosenza) was contested.

Specifically, as also emerged from the preliminary verification carried out by the Office, from the url [http: // ...](http://...) it was possible to freely view and download the Deliberation of the Extraordinary Commissioner no. XX of the XX, concerning "Cancellation from the general medicine lists of Dr. XX for withdrawal from 03/03/2015". This Resolution contained in the subject matter and in the text personal data and information regarding the aforementioned doctor and his resignation from the post of general medicine, as well as in the attachment, the full note sent by the same Dr. XX to the ASP Cosenza, assumed by prot. n. XX of the XX, with further detailed references to his own health problems and to the working relationship with the ASP.

2. The legislation on the protection of personal data

Pursuant to the relevant regulations, "personal data" is "any information concerning an identified or identifiable natural person ("interested")" and "the natural person who can be identified, directly or indirectly, with particular reference to a identifier such as the name, an identification number, location data, an online identifier or one or more characteristic elements of its physical, physiological, genetic, psychic, economic, cultural or social identity "(art. 4, par. 1, No. 1, of the GDPR).

With particular reference to the case submitted to the attention of this Authority, please note that public entities, such as the Healthcare Company, may disclose "personal data" only if this operation is provided for "by a law or, in the cases provided for by law, regulation "(Article 2-ter, paragraphs 1 and 3, of the Code), in compliance - in any case - with the principles of data protection, including that of "minimization", on the basis of which personal data must be "adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed" (Article 5, paragraph 1, letter c, of the GDPR). In this context, it is noted that, in any case, the dissemination of data relating to health is prohibited (Article 2-septies, paragraph 8, of the Code; see also Article 9, paragraphs 1, 2, 4, of GDPR), ie "personal data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information relating to his state of health" (Article 4, paragraph 1, no. 15 ; recital 35 of the GDPR).

In this regard, since 2014, the Guarantor has highlighted that data suitable for revealing the state of health is not only an indication of the pathology, but any information "from which one can infer, even indirectly, the state of illness or the existence of pathologies of the subjects concerned, including any reference to the conditions of invalidity, disability or physical and / or

mental handicap "(see provision no. 243 of 15/5/2014 containing the" Guidelines on the processing of personal data, also in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other obliged entities ", published in the Official Gazette no. 134 of 12/6/2014 and in www.gdpd.it, web doc. . 3134436, first part par. 2 and second part, par. 1; as well as provisions cited therein in note no. 5).

3. Preliminary assessments of the Office on the processing of personal data carried out.

Following the checks carried out on the basis of the elements acquired and the facts that emerged as a result of the investigation, as well as subsequent evaluations, the Office with note prot. n. XX of the XX has ascertained that the Provincial Health Authority of Cosenza - by disseminating the personal data and information contained in the document published online described above - has carried out a processing of personal data that does not comply with the relevant regulations on the protection of personal data contained in the GDPR. Therefore, with the same note, the aforementioned Company was notified of the violations carried out (pursuant to Article 166, paragraph 5, of the Code), communicating the start of the procedure for the adoption of the measures referred to in Article 58, par. 2, of the RGPD and inviting the aforementioned administration to send to the Guarantor defensive writings or documents and, if necessary, to ask to be heard by this Authority, within the term of 30 days (Article 166, paragraphs 6 and 7, of the Code; as well as art.18, paragraph 1, of law no. 689 of 11/24/1981).

4. Defensive memories.

The Provincial Health Authority of Cosenza, with the note prot. n. XX of the XX, sent to the Guarantor his defense writings in relation to the violations notified.

In this regard, please note that, unless the fact constitutes a more serious crime, anyone who, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false documents or documents, is liable pursuant to art. 168 of the Code, entitled "False statements to the Guarantor and interruption of the performance of the tasks or the exercise of the powers of the Guarantor".

In particular, with regard to the conduct held, the Company highlighted, among other things, that:

- "this is a fact dating back over time (year 2015) [and] this Commissarial Structure, established a few months ago, promptly proceeded, even before the notification of the violation in question, to coordinate with the office in charge in order to adopt a specific policy (in a state of activation and adoption) concerning the correct management of the section of the praetorian register of the ASP of Cosenza, present on the institutional website ";

- "In particular, as a proactive activity, in compliance with the principle of accountability of the Owner pursuant to art. 5 GDPR, with an email communication dated 03/24/2021, the office in charge requested the company DPO for a specific opinion on the data to be obscured in the publication on the online register [...]. This request was met with a note dated 01.04.2021 [...] and, consequently, a specific "Directive for the formulation of the deliberative act and executive decision for online publication of the Telematic Register" was adopted in which, in addition to drawing the attention of all the offices on compliance with the measures recommended by the Guarantor have been provided to all the Directors of the Departments, the Health Districts and the Directors / Managers of the UU.OO.CC., UU.OO.SS.DD. and UU.OO.SS. and, in particular, to the Offices responsible for generating the documents, appropriate measures to be taken before publishing acts and documents containing personal data on the institutional website and on the online Praetorian Register ";
- "the violation of personal data concerned only one interested party and [...] following notification of the aforementioned violation, the documents containing information on the health status of the [complainant] were immediately removed";
- "although the publication of such content (state of health of the person concerned) undoubtedly involves a violation in terms of privacy, it should be noted that such information was very generic as it did not contain any details concerning, for example, the diagnosis of the pathology suffered by the doctor in question ";
- "As part of the technical and organizational measures adopted by the Entity pursuant to art. 25 and 32 of the GDPR, a special Privacy Office has been set up with a view to more effective protection of the personal data of users / patients of this Healthcare Company. A Data Protection Officer (DPO / RPD) has also been designated who, as highlighted above, continuously makes opinions and indications regarding the processing of personal data and has immediately become a point of reference for the correct fulfillment of obligations. provided for in terms of the processing of personal data ";
- "This ASP has already started a privacy training course aimed at personnel in order to increase and strongly affirm the awareness of the discipline in terms of personal data protection in order to prevent further claims of the same type".

5. Evaluations of the Guarantor

The issue that is the subject of the case submitted to the attention of the Guarantor concerns the disclosure of the complainant's personal data and information, also relating to health, contained in the Deliberation of the Extraordinary Commissioner no. XX and in the relative note of the complainant attached to it, published online, regarding resignation from the post of general medicine, with further detailed references to health problems and the employment relationship with the

A.S.P.

As part of the investigation opened in this regard by this Authority, the Healthcare Company confirmed, in its defense briefs, the online dissemination of the personal data described, representing that it had removed the data on the complainant's health from the website. institutional.

With regard to the conduct held, it is in any case represented that the observation of the Healthcare Company cannot be accepted to justify its behavior, on the basis of which the information published was "very general, not containing, in fact, any details concerning, for example, the diagnosis of the pathology suffered by the doctor in question ". This is because this interpretation is in contrast with the definition of "health data" contained in the RGPD, according to which not only information relating to the diagnosis, but any personal data relating "to the physical or mental health of a natural person, including the provision of health care services, which disclose information relating to his state of health "(Article 4, paragraph 1, no. 15; recital no. 35 of the GDPR). In the present case, it was found that the ASP issued the note in which the same complainant declared his irrevocable resignation to the Company due to serious health problems also generated by the stress caused by the conditions of his employment relationship. For such information, the regulations on the protection of personal data provide for an express prohibition of dissemination (Article 2-septies, paragraph 8, of the Code; see also Article 9, paragraphs 1, 2, 4, of the RGPD).

6. Outcome of the investigation relating to the complaint presented

The circumstances highlighted in the defense writings examined as a whole, certainly worthy of consideration for the purpose of evaluating the conduct, are not sufficient to allow the filing of this proceeding, since none of the hypotheses provided for by art. 11 of the Guarantor Regulation n. 1/2019.

In this context, the preliminary assessments of the Office are confirmed with the note prot. n. XX of the XX and the unlawfulness of the processing of personal data carried out by the Provincial Health Authority of Cosenza is noted, as the dissemination on the institutional website:

1) of the data on the health of the person concerned, occurred in violation of the prohibition provided for by art. 2-septies, paragraph 8, of the Code and art. 9, para. 1, 2 and 4, of the GDPR;

2) the data and personal information of the data subject - such as information relating to the work activity and the withdrawal (including the motivation) from the same - occurred in violation of the principle of "minimization" of the data, considering that

the same are not be "limited to what is necessary with respect to the purposes for which they are processed", pursuant to art. 5, par. 1, lett. c), of the GDPR.

Considering, however, that the conduct has exhausted its effects, as the data controller declared that he had removed the data on the complainant's health from the institutional website, without prejudice to what will be said on the application of the pecuniary administrative sanction, the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2, of the GDPR.

7. Adoption of the injunction order for the application of the pecuniary administrative sanction (Articles 58, paragraph 2, letter i; 83 of the GDPR)

The Provincial Health Authority of Cosenza appears to have violated Articles 5, par. 1, lett. a) and c); 9, para. 1, 2 and 4, of the GDPR; as well as art. 2-septies, paragraph 8, of the Code.

In this regard, art. 83, par. 3, of the RGPD, provides that «If, in relation to the same treatment or related treatments, a data controller or a data processor violates various provisions of this regulation, with willful misconduct or negligence, the total amount of the pecuniary administrative sanction does not exceeds the amount specified for the most serious violation '.

In the present case, the violation of the aforementioned provisions - also considering the reference contained in art. 166, paragraph 2, of the Code - is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the GDPR, which therefore applies to the case in question.

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the RGPD, as well as art. 166 of the Code, has the corrective power to "inflict a pecuniary administrative 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 every single case ". 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).

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 GDPR.

In this sense, the detected conduct in violation of the regulations on the protection of personal data is of a culpable nature and had as its object the online dissemination of personal data, referring to a single interested party, for about six years, also

relating to health (Article 9 of the GDPR). Following the request of the Office, the Healthcare Company intervened promptly, collaborating with the Authority during the investigation of this proceeding in order to remedy the violation, mitigating its possible negative effects. In the reply to the Guarantor, various technical and organizational measures implemented pursuant to art. 25-32 of the GDPR. For the purposes of determining the administrative sanction, in any case, account is taken of the fact that in the past the Provincial Health Authority of Cosenza was the recipient of a similar sanction procedure for unlawful dissemination of health data and for violation of the principle of minimization (see provision no. . 173 of 1/10/2020, in www.gpdp.it, web doc. No. 9483375).

Due to the aforementioned elements, assessed as a whole, it is deemed necessary to determine, also taking into account the complex management and financial framework of the entity currently subject to commissioner management, pursuant to art. 83, para. 2 and 3, of the RGPD, the amount of the pecuniary sanction, provided for by art. 83, par. 5, of the RGPD, to the extent of € 18,000.00 (eighteen thousand) for the violation of Articles 5, par. 1, lett. a) and c); 9, para. 1, 2 and 4, of the GDPR; as well as art. 2-septies, paragraph 8, of the Code; as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same RGPD.

In relation to the specific circumstances of this case, relating to the dissemination of health data, it is also believed that the ancillary sanction of the publication of this provision on the website of the Guarantor, provided for by art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019.

Finally, it is believed that the conditions set out in art. 17 of the Guarantor Regulation n. 1/2019.

WHEREAS, THE GUARANTOR

detected the unlawfulness of the treatment carried out by the Provincial Health Authority of Cosenza in the terms indicated in the motivation pursuant to Articles 58, par. 2, lett. i), and 83 of the GDPR

ORDER

to the Provincial Healthcare Company of Cosenza, in the person of the pro-tempore legal representative, with registered office in Viale Degli Alimena, 8 - 87100 Cosenza (CS) - Tax Code 02853720783 to pay the sum of € 18,000.00 (eighteen thousand) as a pecuniary administrative sanction for the violations mentioned in the motivation;

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to the same Health Authority to pay the sum of € 18,000.00 (eighteen 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.

Please note that the offender has the right to settle the dispute by paying - again according to the methods indicated in the annex - of an amount equal to half of the sanction imposed, within the term set out in art. 10, paragraph 3, of d. lgs. n. 150 of 1/9/2011 provided for the submission of the appeal as indicated below (Article 166, paragraph 8, of the Code).

HAS

- the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019;
- the annotation in the internal register of the Authority of the violations and measures adopted pursuant to art. 58, par. 2, of the RGPD with this provision, as required by art. 17 of the Guarantor Regulation n. 1/2019.

Pursuant to art. 78 of the RGPD, of the arts. 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, September 16, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE DEPUTY SECRETARY GENERAL

Philippi