[doc. web n. 9777127]

Injunction order against the Municipality of Partanna - 28 April 2022

Record of measures

n. 149 of 28 April 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by Professor Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer. Guido Scorza, members and the cons. Fabio Mattei, general secretary;

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 April 2019, published in the Official Gazette n. 106 of 8 May 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;

Professor Ginevra Cerrina Feroni will be the speaker;

WHEREAS

1. Introduction.

With a complaint of the XX, submitted pursuant to art. 77 of the Regulations, the complainant, who at the time of the facts subject of the complaint was an employee of the Municipality of Partanna (hereinafter, the "Municipality"), complained that the

Municipality published the resolution of the Municipal Council on its institutional website n. XX of the XX, with the subject "[initials of the surname and name of the complainant] c / Municipality of Partanna Appeal in labor matters pursuant to Articles 414 and ss. c.p.c. before the Court of [...] - Legal identification to be appointed for opposition to appeal ", with which the appearance in court was proposed" [...] before the Court of [...] against the appeal relating to labor pursuant to Article 414 of the Italian Civil Code, notified by the employee [initial of the complainant's name and surname] (better identified in the attachment sub letter A) which is not published pursuant to Legislative Decree 196/2003 and subsequent amendments) on [...] prot. n. [...], with which he sued the Municipality [...] before the Labor Judge to ascertain and declare the responsibility of the Municipality [...] for having put in place an illegitimate disciplinary procedure against the [title and surname in full of the complainant], causing him / her pecuniary and non-pecuniary damage and, conversely, obliging the same Entity to compensate [...] ".

The publication of the resolution in question was ascertained by the Authority with a service report of the XXth (prot. No. XX).

The complainant also stated that, as a result of the publication of the aforementioned resolution, the events that were the subject of the judicial controversy "also aroused considerable media hype", having been cited "on the front page of a well-known local periodical, [with] an article who reported excerpts from the resolution, seasoned with notes of disapproval from the editor [of the same] [...] ". This article, "taken from various sources, was echoed by many negative comments on the main social platforms, creating considerable and unfair damage to the [...] image" of the complainant.

2. The preliminary activity.

With a note dated 1XX (prot. No. XX), the Office, on the basis of the elements acquired, the checks carried out and the facts that emerged as a result of the investigation, notified the Municipality, 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), and 6 of the Regulations, as well as 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), inviting the aforementioned holder to produce defensive writings to the Guarantor o documents 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).

With a note of the XX (prot.n.XX), the Municipality presented a defensive brief, declaring, in particular, that:

"The resolution of the municipal council no. XX is published on the institutional website, in the "online praetorian register" on

the basis of the provisions of art. 124 of the legislative decree n. 267/2000 and art. 11 of the regional law n. 44 of 1991, which provide that all the deliberative acts of the municipalities must be published on the praetorian register for a period of 15 days in order to become effective. respect the special provision referred to in art. 10 of the same legislative decree 267/2000, which provides for a strengthened transparency regime on all acts of local authorities ";

however, "the plaintiff (former municipal employee) was indicated in the text of the resolution proposal with mere initials (attaching a separate unpublished personal data sheet) and, however, in the dispositive part of the deed, copying the subject of the application judicial action advanced by the employee before the Labor Judge, [one], due to an obvious oversight, failed to delete the wording ["title and surname in full of the complainant"] copied from the text of the conclusions of the appeal to the Court ";

“[…] Never on other occasions have the particulars of plaintiffs in judgments been disseminated, the subject of which implies the dissemination of data that could compromise the right to personal privacy. This is an isolated case evidently not due to malice but to mere carelessness on the part of the instructor [...] ";

"On XX, that is, after a little less than 24 hours from the acquisition to the protocol of the notification [of the] Authority (XX), the person in charge of the online register made the necessary changes to the text of the resolution object of the dispute, republishing it in the section of the online register purified of all personal references ";

"On XX, the Secretary General adopted a specific directive (prot. [...]) containing specific organizational measures, already implemented by the Body, in order to overcome the current practice of minimizing personal data through the mere indication of the initials and, above all, to avoid reporting in the resolutions with which it is decided to resist or take legal action all the concrete references to the dispute that are not proportionate to the purpose of the decision, at the same time starting a review of the risk register and of the assessment impact, with regard to this process ";

“With regard to the“ media hype ”[, the Municipality believes that] […] there is in any case an interest in knowledge and transparency as a tool for forming public debate”.

On the occasion of the hearing, requested by the Municipality pursuant to art. 166, paragraph 6, of the Code and held on XX (see minutes prot. No. XX of the XX), the Municipality also declared, in particular, that:

"It was [...] a mere failure, which occurred despite the considerable efforts made by the Municipality and aimed at adapting to the new regulatory framework for the protection of personal data. In fact, personal data are usually contained in an attachment

to the resolution, which is never published on the institutional website. In the present case, due to human error, the text present in a non-public document was copied and pasted during the writing of the resolution, thus making the interested party identifiable. The Municipality therefore acted without willful misconduct, without gross negligence and in absolute good faith ”; "The Municipality believes, in any case, that this oversight did not cause damage to the person concerned. The media hype that involved the affair concerns, in fact, past events that pertain to the relevant offices held by the same within the Administration and which, in a small municipality, are inevitably known by the community and the press ".

3. Outcome of the preliminary investigation.

The personal data protection discipline provides that public subjects, in the context of the work context, may process the personal data of the interested parties, also relating to particular categories, if the processing is necessary, in general, for the management of the employment relationship. and to fulfill specific obligations or tasks provided for by the law or the law of the Union or of the Member States (art. 6, par. 1, lett. c), 9, par. 2, lett. b) and 4 and 88 of the Regulation). The processing is also lawful when it is "necessary for the performance of a task of public interest or connected to the exercise of public authority vested in the data controller" (Article 6, paragraph 1, letter e), 2 and 3, and art. 9, par. 2, lett. g), of the Regulations; art. 2-ter of the Code, in the text prior to the changes made by Legislative Decree 8 October 2021, n. 139).

European legislation provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of the [...] Regulation with regard to processing, in accordance with paragraph 1, letters c) and e), 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 dissemination of personal data (such as publication on the Internet) by public entities is permitted only when provided for by a law or, in the cases provided for by law, by regulation (cf. . art. 2-ter, paragraphs 1 and 3, of the Code, in the text prior to the changes made by the legislative decree 8 October 2021, n. 139).

The data controller is required, in any case, to comply with the principles of data protection, including that of "lawfulness, correctness and transparency" as well as "data minimization", on the basis of which personal data must be "processed in a lawful, correct and transparent manner towards the data subject" and 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 a) and c), of the Regulation).

In this context, it is noted, first of all, that although - as declared by the Municipality - the title and surname of the complainant were mentioned in the resolution in question due to human error, involving the dissemination of information referring to a natural person directly identified (see art. , on this point, provisions 25 February 2021, n. 68, web doc. 9567429; 2 July 2020, n. 118, web doc. 9440025; 2 July 2020, n. 119, web doc. n. 9440042). This also taking into account the fact that, as is clear from the declarations in the documents, the data controller is a small body.

As for the legal basis that, in the opinion of the Municipality, would have justified the publication of this resolution and the consequent dissemination of the complainant's personal data, it is highlighted that already in the "Guidelines on the processing of personal data, also contained in deeds and documents administrative, carried out for the purposes 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, part two, par. . 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 time period of publication established by this - the principles of data protection must, however, be respected (Article 5 of the Regulation).

These considerations also apply to the obligations deriving from art. 124 of Legislative Decree 267/2000, invoked by the Municipality to justify the publication of the resolution in question, given that all the above-mentioned limits apply to publications in the online praetorian register with regard to compliance with the principle of "minimization of data "(art. 5, par. 1, lett. c) c), of the Regulation; cf. part II, par. 3 (a) of the aforementioned Guidelines). The publication of the documents in question, without any reference that could even indirectly allow the identification of the complainant, would not, however, compromise the principle of adequate motivation pursuant to art. 3 of the l. 241/1990, since the full version of the deed would have remained, in any case, in the acts of the Municipality and would have been accessible, by qualified persons, in the ways and within the limits established by law.

Moreover, the circumstance that the resolution in question has been published, without prior anonymisation, in the manner and within the terms in which it is possible, beyond the time frame provided for by the sector regulations (see Article 124 of Legislative Decree August 18, 2000, n.267, concerning the publicity of the acts of local authorities on the praetorian notice board, as well as art.32 of the law June 18, 2009, n.69), further connotes the unlawfulness of the dissemination of personal data in it contents (see Civil Cassation, section II, order no. 18292 of 3 September 2020).

As regards the fact that, in the opinion of the Municipality, the publication of the resolution in question was in any case justified pursuant to art. 10 of the legislative decree 18 August 2000, n. 267, it is noted that the first paragraph of this article, in providing in a general way that all the acts of the municipal administration are public, expressly excludes cases in which "their dissemination may affect the right to privacy of persons" (cf. . provision no. 34 January 27, 2021, web doc. no. 9549165).

As it emerged during the investigation, the Municipality has, instead, published on its institutional website personal data relating to events related to the employment relationship at the time with the complainant (also with regard to a disciplinary procedure), to a litigation promoted by the same in civil proceedings and other situations relating to the private sphere of the complainant (or the circumstance that the same had not accepted a working position in another municipality), which cannot be considered "adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed "(art. 5, par. 1, letter c), of the Regulation; with regard, in general, to compliance with the principle of data minimization when publishing documents online, albeit in different contexts, see, lastly, prov. 16 December 2021, n. 448, doc. web n. 9742923; prov. February 25, 2021, n. 69, doc. web n. 9565258; prov. 11 February 2021, n. 54, doc. web n. 9556625; prov. January 27, 2021, n. 34, doc. web n. 9549165; prov. January 14, 2021, n. 22, doc. web n. 9543138; v. also previous provisions referred to therein).

The disclosure of the complainant's personal data on the institutional website of the Municipality (which lasted for a long period of time, ie from the XX to the XX) has therefore occurred in a manner that does not comply with the principles of "lawfulness, correctness and transparency" and "minimization of the data ", and in the absence of an appropriate legal basis, in violation of articles 5, par. 1, lett. a) and c), 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 , although worthy of consideration, do not allow to overcome the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the dismissal of this proceeding, since none of the cases provided for by the '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 Municipality is noted, for having disclosed the complainant's personal data relating to events related to the

employment relationship at the time with the complainant (also with regard to a disciplinary proceeding), a litigation brought by the same in civil proceedings and other situations relating to the private sphere of the complainant (or the circumstance that the same had not accepted a working position in another municipality), in violation of articles . 5, par. 1, lett. a) and c), 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).

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, as also referred to by art. 166, paragraph 2, of the Code.

In this context, considering, in any case, that the conduct has exhausted its effects (see note prot. No. XX of the XX, in deeds, in which the Municipality stated that it "took steps on XX to carry out the necessary corrections to the text of resolution no. XX "), the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2, of the Regulation.

5. 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 Regulations, in this case the violation of the aforementioned provisions is subject to the application of the pecuniary administrative sanction 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 detected conduct had as its object the dissemination of personal data relating to events related to the employment relationship at the time with the complainant (also with regard to a disciplinary procedure), to a dispute initiated by the same in civil proceedings and to other situations relating to the private

sphere of the complainant (or the circumstance that the same had not accepted a job position in another municipality), despite the numerous indications given by the Guarantor to all public entities since 2014 with 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", mentioned above. Account was also taken of the considerable period of time in which the personal data of the interested party were disseminated - or from the XX (see text of the resolution in the documents, where it is stated that the same "was published at 'Albo Pretorio […] dal XX […] ") to XX- as well as, for the purposes of assessing the level of damage suffered by the interested party, the circumstance that the violation led to a media exposure of the events that affected the complainant.

On the other hand, it was favorably taken into consideration that the violation did not concern particular categories of personal data and that it involved only one interested party. The owner then promptly took action to remove the data subject to the complaint as soon as he became aware of the violation, giving full cooperation during the investigation, as well as providing assurances regarding the ways in which he will publish deeds and documents containing data in the future. personal on its institutional website. Furthermore, 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 € 2,000 (two thousand) for the violation of Articles 5, par. 1, lett. a) and c), 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 withholding administrative fine, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account the considerable period of time in which the complainant's personal data have been disclosed, it is also believed that the ancillary sanction of the 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 the conditions set out in art. 17 of Regulation no. 1/2019.

WHEREAS, THE GUARANTOR

declares, pursuant to art. 57, par. 1, lett. f), of the Regulations, the unlawfulness of the processing carried out by the Municipality of Partanna for violation of Articles 5, par. 1, lett. a) and c), and 6 of the Regulations, as well as 2-ter 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 of the Code, to the Municipality of Partanna, in the person of the pro-tempore legal representative, with registered office in Via Vittorio Emanuele, 18 - 91028 Partanna (TP), C.F. 00239820814, to pay the sum of 2,000 (two thousand) as a pecuniary administrative sanction 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

to the aforementioned Municipality, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of 2,000 (two 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;

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, April 28, 2022

THE VICE-PRESIDENT

Cerrina Feroni

THE RAPPORTEUR

Cerrina Feroni

THE SECRETARY GENERAL

Mattei