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Injunction order - May 13, 2021 \*

Record of measures

n. 197 of May 13, 2021

## THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

In today's meeting, which was attended by Prof. Pasquale Stanzione, president, prof.ssa 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 (hereinafter, the "Regulation");

GIVEN the Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 (Legislative Decree 30 June 2003, n.196, as amended by Legislative Decree 10 August 2018, no. 101, hereinafter the "Code");

HAVING REGARD to the Deontological Rules relating to the processing of personal data in the exercise of journalistic activity (Official Gazette of 4 January 2019, no. 3, hereinafter "Deontological Rules");

GIVEN the report received by the Guarantor, pursuant to art. 144 of the Code, on 26 August 2019 with which some associations for the protection of citizens and consumers have detected a use of data that does not comply with the regulations on the protection of personal data by Dr. Cateno De Luca, current Mayor of the City of Messina, through the Facebook page "De Luca Mayor of Messina";

CONSIDERING that the reporting associations have, in particular, highlighted that:

the Facebook page indicated above is used frequently in order to publish personal data, often contained in videos and images, of subjects described as authors or alleged perpetrators of infringements, thus exposing them to comments that are harmful to their dignity formulated by the social network users;

this conduct was carried out without however guaranteeing any protection against the most fragile categories, such as minors and people in conditions of social and economic difficulty, as evidenced by the dissemination, among others, of a video portraying people, including a presumably minor of age, caught in the act of throwing bulky waste in an area not dedicated to

the disposal of the same or one containing images of homeless non-European citizens taken, in the early hours of the morning, lying on the ground inside a public building;

CONSIDERING that, at the same time as the report was made, further elements in this regard were received by the Authority from the dissemination of similar news by some newspapers;

GIVEN the note of 5 September 2019 with which the Authority sent Dr. Cateno De Luca, in his capacity as Mayor of Messina, a request for information through which he was asked to specify the identification details of the person holding the account through which the above-described data was disseminated, the methods of acquiring the published contents, as well as the legal prerequisite and the purposes underlying the aforementioned processing;

GIVEN the subsequent note of 24 October 2019 with which, following the failure to respond to the request for information, the same was reiterated pursuant to art. 157 of the Code;

GIVEN the memorandum of 5 November 2019 with which the defendant, in representing that the initial failure was due to an internal misunderstanding, communicated that:

starting from the moment of his election to the institutional office of Mayor, the Facebook page "De Luca Mayor of Messina" was used "to disseminate and make known to the citizens, the administrative action (...) every day [carried out] within the their mandate and therefore interact with citizens and (...) stimulate their participation ";

one of the first commitments undertaken with the performance of this role was "to develop interventions to combat the increasingly frequent phenomenon of abandonment of waste, even bulky ones, in the municipal area" as a correct performance of the political mandate requires that "constant checks are carried out to search for uncontrolled abandonment of waste and illegal landfills and periodic checks to trace" those responsible;

the owner of the account used for the dissemination of the indicated contents is Cateno De Luca, specifying that the acquisition of the "contents took place on the public road by a private citizen through the use of a smartphone which, by sending in private form to the Mayor, he intended, through the video, to resume the conduct of those who at that time were committing an environmental crime, in one of the busiest urban streets in the city, regardless of the risk of being caught in the act, in order to report to the Mayor , therefore to a public authority ";

with reference to the publication of said contents, the legal basis of the processing, "for the reasons expressed above, is not found in the consent, since it is still a lawful treatment pursuant to art. 6 GDPR, as necessary for the performance of a task of

public interest or connected to the exercise of public authority vested in the data controller, being the same Mayor of the Municipality of Messina ";

with reference to the hypothesized minor age of the protagonists of one of the reported videos, which, "to the best of the writer's knowledge, they have not been identified and their age is not known", also taking into account the fact that "the 'attitude captured in the shot (...) shows bold and careless subjects of the commission of serious actions in public and does not in any way suggest that they may be minors, but rather mature and bold characters who acting in broad daylight and in place public are contemptuous of the most elementary rules of coexistence ", while declaring that they have in any case removed the page, in order to protect the rights of the subjects involved;

GIVEN the note of 24 September 2020 with which the Authority, having regard to the contents already reported previously, as well as new videos and images disseminated through the Facebook profile indicated above in ways that appeared not to comply with the principles of lawfulness of the processing, initiated against the data controller a procedure pursuant to art. 166, paragraph 5, of the Code for the possible adoption of the measures referred to in art. 58, par. 2, of the Regulations, notifying alleged violations of the law;

Whereas:

the legal basis for the processing of data necessary for the performance of a task in the public interest or connected to the exercise of public authority vested in the data controller (Article 6, paragraph 1, letter e), of the Regulation) is constituted, in accordance with the provisions of art. 2-ter, paragraphs 1 and 3 of the Code, exclusively by a law or regulation that provides for it and this with reference to any processing operation, including dissemination;

by virtue of what was inferred by the defendant, as well as what emerged from evaluations conducted also on further contents published in the profile indicated above, the treatment put in place, contrary to what is asserted by the same, did not appear supported by the legal basis required by the regulations, nor in any case governed by internal acts of the body aimed at contemplating the use of social networks in the pursuit of purposes related to the exercise of tasks of public interest; this aspect, together with the publication in the aforementioned social profile - whose account is in the name of Cateno De Luca - of political propaganda contents, as well as reports of daily and family life of the latter, implies that the processing carried out cannot unequivocally be traced back to the ownership of the entity represented, but appears mostly as an expression of an initiative of the individual;

by virtue of the foregoing, it is believed that the treatment put in place by the respondent must be assessed using as a reference parameter the rules of the Code which contain the principles applicable in the field of journalistic activity and other forms of expression of thought and therefore, for this reason, the alleged violations of the law notified to the same have been identified in the dissemination of personal data, in particular videos and images, suitable for making the interested parties identifiable, including minors, providing, in some cases, even details concerning particularly delicate aspects of their life without this being said to correspond to a relevant public or social interest and therefore such as to be in contrast with art. 137 of the Code and with articles 7, 8, 9 and 10 of the Deontological Rules, as well as with the principles provided for by art. 5, par. 1, lett. a) and b), of the Regulation with reference to the lawfulness and correctness of the processing;

NOTING that:

the defendant did not deem it necessary to produce defensive briefs following the communication of the initiation of the above procedure and that the contested contents are still present on the Facebook page "De Luca Sindaco di Messina", with the exception of one - in the Specifically, the video concerning two people intent on throwing waste in the area designated for disposal - removed from the same in response to the first request for information sent by the Authority;

in one of the videos still published - [https:// ...](https://...) - there are images of people filmed in clear text in an evident condition of economic and social difficulty without the identifiability of the same being justified by specific reasons of public interest, going beyond with this the limits set by the principle of essentiality of the information referred to in Articles 137, paragraph 3, of the Code and 6, paragraph 1, of the Deontological Rules, violating the right of non-discrimination pursuant to art. 9 of the aforementioned Rules and also harming the dignity of the interested parties;

on the [https:// ...](https://...) page, on the other hand, there is an image of a disabled boy in association with which a copy of an administrative provision concerning the assignment in concession to his parents of a parking space near the relative home has also been disseminated - the address of which is also visible - and a post with a particularly offensive tone has also been published directed towards the employees of the entity he manages;

even in this case, the disclosure of the data indicated above is not justified by specific reasons of public interest - also taking into account the fact that, in the presence of the criticalities represented with regard to the efficiency of the administrative action of the services responsible for issuing permits stop due to disability, he should and could have, as the administrative top of the body, possibly intervened with other instruments against the managers of the related services instead of, albeit without

reference to specific persons, giving vent to threats and public offenses in their concerns - and therefore appears in contrast not only with the principle of essentiality of the information but also with the provisions set up to safeguard the confidentiality and dignity of people suffering from health problems who, moreover, in the case in question, appear to be a minor of age and therefore, as such and in addition to its specific condition, deserving of particular protection pursuant to art. 7 of the Deontological Rules, as well as the provisions of the Treviso Charter expressly referred to by the latter and updated with the resolution of the Guarantor of 26 October 2006 [cf. institutional website [www.gdpd.it](http://www.gdpd.it), doc. web 1356049] which provides, in particular, that "in the case of minors who are sick, injured, disadvantaged or in difficulty, particular attention and sensitivity must be paid to the dissemination of images and events in order to avoid that, in the name of a pitying feeling, you arrive at a sensationalism that ends up becoming exploitation of the person ";

among the contents indicated in the communication of the initiation of the procedure pursuant to art. 166, paragraph 5, of the Code, and still present on the net, there are also pages containing videos and images of minors broadcast in clear text in association, in one case, with a situation of hardship and degradation - such as that connected to the question of " slum "([https: // ...](https://...)) - and in the other in connection with a post in which the particular family and health conditions of a girl are described whose image is taken in a video published in clear text ([https: // ...](https://...));

even in these cases it is considered that the processing carried out does not comply with the principle of essentiality of the information, as well as with the need to protect the primary interest of the minor who, on the basis of the provisions expressly provided by the Treviso Charter, "must not be involved in any communications detrimental to the harmonious development of his personality, and this regardless of any parental consent ", paying particular attention to the dissemination of images and events concerning children who are sick, disadvantaged or in difficulty;

CONSIDERING that, in this case, the dissemination of content without suitable measures to exclude the identifiability of the subjects being filmed, including minors, as well as other non-essential details - such as the residential address of the disabled child contained in the administrative deed published on the page [https: // ...](https://...) - is to be considered in contrast with art. 5, par. 1, lett. a) and b) of the Regulations, with art. 137, paragraph 3, of the Code, as well as with articles 6, paragraphs 1, 7, 8, 9 and 10 of the Deontological Rules and that the relative treatment, as it is carried out with the aforementioned methods, is to be considered illegal;

NOTING, moreover, that:

following the notification of the initiation of the procedure pursuant to art. 166, comma 5 of the Code, the data controller has not provided any element in relation to the objections raised by the Authority, nor has he adopted any measures to protect the rights of the interested parties, as indicated in the aforementioned communication, thus showing an attitude that is not inclined to the collaboration with the Authority after the initial feedback provided;

this conduct led to the continuing violation of the rights of various subjects, including children under the age of minors and subjects in conditions of objective difficulty;

among the data being processed there is also information concerning the health conditions of some of the subjects involved or concerning particular situations of economic and social hardship of the same;

the violations committed, although evaluated in the context of the treatments put in place for purposes related to the freedom of expression of thought, are also aggravated by the institutional role played by the defendant who, by virtue of it, had easier access to certain information also in as the recipient of spontaneous messages from some citizens that he then decided to publish online in the manner described above, thereby determining an improper use of the same also for the purpose of propaganda of his own political action;

CONSIDERING therefore:

to have, in relation to the same owner, pursuant to art. 58, par. 2, lett. f), of the Regulations, the extent of the prohibition of further processing of the contents identified above, or of any other similar contents attributable to it, as they lack adequate measures aimed at excluding the identifiability of the subjects captured, as well as the dissemination of details not essential such as to be considered harmful to the confidentiality and dignity of the same, except for the mere conservation for the purpose of their possible use in court and

to have to adopt in this regard against Cateno De Luca, as owner of the Facebook page "De Luca Mayor of Messina", a specific order-injunction pursuant to art. 166, paragraph 7, of the Code and 18 of law no. 689/1981, for the application of the pecuniary administrative sanction provided for by the combined provisions of 166, paragraph 2, of the Code, and 83, par. 3 and 5 of the Regulations;

REMEMBER that, in the event of non-compliance with the measure of this prohibition of treatment ordered by the Guarantor, the criminal sanction referred to in art. 170 of the Code, in addition to the administrative sanction referred to in art. 83, par. 5, lett. e), of the Regulations;

NOTING that for the determination of the amount of the financial penalty, it is necessary to take into account the elements indicated in art. 83, par. 2, of the Regulation and that in the present case it is necessary to take into consideration, on the one hand:

- a) the duration of the violation, which lasted from the time of the initiation of the procedure by the Authority for almost all of the disputed conduct;
- b) the particular damage to the dignity of the persons concerned deriving from the treatment in question and from its continuation for the period indicated above, as well as from the particular nature of the treaties;
- c) the failure to adopt measures subsequent to the notification of the initiation of the procedure by the Authority with regard to the contents indicated therein;
- d) the absence of collaboration with the latter, which can be inferred from the inertia manifested by the data controller after the notification of the initiation of the aforementioned procedure;
- e) the institutional role covered by the defendant suitable as such to place the same in a differentiated position with respect to an ordinary person both in terms of accessibility to the information that has been disseminated and the media coverage of the published contents;

and, on the other hand:

- f) the absence of specific precedents;

CONSIDERING the above parameters and the principles of effectiveness, proportionality and dissuasiveness indicated in art. 83, par. 1, of the Regulations;

CONSIDERING that, on the basis of all the elements indicated above, the pecuniary administrative sanction should be applied in the amount of 50,000.00 (fifty thousand) euros;

CONSIDERING also - also in consideration of the scope of dissemination of the data and the time frame in any case elapsed from the time of publication of the disputed and not yet removed content - that, pursuant to Articles 166, paragraph 7, of the Code, and 16, paragraph 1, of the Guarantor Regulation no. 1/2019, this provision should be published on the Guarantor's website, as an ancillary sanction;

CONSIDERING that the conditions exist to proceed with the annotation in the internal register of the Authority referred to in art. 57, par. 1, lett. u), of the Regulation, in relation to the measures adopted in this case in compliance with art. 58, par. 2, of the

same Regulation;

HAVING REGARD to the documentation on file;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000;

SPEAKER Prof. Pasquale Stanzione;

WHEREAS, THE GUARANTOR:

pursuant to art. 58, par. 2, lett. f), of the Regulations, provides against Cateno De Luca, as owner of the Facebook page "De Luca Mayor of Messina", the extent of the prohibition of further processing of the contents specifically indicated in the introduction or, of any other similar contents referable to the same owner, as they lack adequate measures aimed at excluding the identifiability of the subjects recorded, as well as the dissemination of non-essential details such as to be considered harmful to the confidentiality and dignity of the same, except for the mere conservation for the purposes of their possible use in court;

ORDER

pursuant to art. 58, par. 2 lett. i), and 83 of the Regulations to Cateno De Luca to pay the sum of € 50,000.00 (fifty thousand / 00) as a pecuniary administrative sanction for the violations indicated in the motivation, representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within thirty days, an amount equal to half of the sanction imposed;

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to Cateno De Luca, in the event of failure to settle the dispute pursuant to the aforementioned art. 166, paragraph 8, of the Code, to pay the sum of € 50,000.00 (fifty thousand), according to the methods indicated in the annex, within 30 days from the 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

pursuant to art. 166, paragraph 7, of the Code, the full publication of this provision on the website of the Guarantor and believes that 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.



The Guarantor invites, pursuant to art. 157 of the Code and 58, par. 1, lett. a), of Regulation (EU) 2016/679, Cateno De Luca, within 30 days from the date of receipt of this provision, to communicate which initiatives have been undertaken in order to implement what is prescribed therein and in any case to provide adequately documented feedback . Please note that failure to respond to the above request is punished with the administrative sanction referred to in Articles 166 of the Code and art. 83, par. 5, lett. e), of Regulation (EU) 2016/679.

Pursuant to art. 78 of the Regulation, as well as art. 152 of the Code and 10 of the d. lg. 1 September 2011, n. 150, against this provision, opposition may be proposed to the ordinary judicial authority, with an appeal filed, alternatively, at the court of the place where the data controller resides or is based or at that of the place of residence of the interested party within the deadline of thirty days from the date of communication of the provision itself or sixty days if the applicant resides abroad.

Rome, May 13, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei

\* The provision was challenged