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Injunction against the Ministry of Education, Regional School Office for Lazio - 25 February 2021

Register of measures

no. 67 of 25 February 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, components and the cons. Fabio Mattei, general secretary;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, as well as on the free circulation of such data and repealing Directive 95/46 /CE, "General Data Protection Regulation" (hereinafter "Regulation");

CONSIDERING the d. lgs. 30 June 2003, no. 196 containing the "Code regarding the protection of personal data (hereinafter the "Code");

CONSIDERING the Regulation n. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved with resolution no. 98 of 4/4/2019, published in the Official Gazette no. 106 of 8/5/2019 and in www.gpdp.it, doc. web no. 9107633 (hereinafter "Regulation of the Guarantor n. 1/2019");

HAVING REGARD to the documentation in the deeds;

HAVING REGARD TO the observations made by the general secretary pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the office of the Guarantor for the protection of personal data, in www.gpdp.it, doc. web no. 1098801;

Speaker Prof. Pasquale Stanzione;

WHEREAS

1. Introduction

This Authority received a complaint in which it was represented that the Regional School Office for Lazio, following a complaint presented by the complainant to the Department of Public Administration regarding the "presumed serious irregularities" committed by the I.C.G. Pitocco of Castelnuovo di Porto, in relation to the attribution of the hours of support provided for pupils

with disabilities, would have sent the Department of Public Administration documentation containing personal data concerning the child, including information relating to the state of health of the minor.

2. The preliminary investigation.

With a note of the XX (prot. n. XX) most recently integrated, on the XX date, the Regional School Office for Lazio replied to the request for information formulated by the Office (prot. n. XX of the XX). Specifically, Dr. XX, director of the School Office, with a declaration of the truthfulness of which is criminally liable pursuant to art. 168 of the Code regarding the protection of personal data - legislative decree 30 June 2003, n. 196 as amended by Legislative Decree 10 August 2018, n. 101 (hereinafter the Code), represented, in particular, that:

- the complainant "addressed the Presidency of the Council of Ministers - Department of Public Administration on the XX date with a note concerning "Reporting of alleged serious irregularities in the allocation of hours of support to pupils with disabilities and request for intervention in the matter" (…). This report referred, in a generic way, to the entire procedure according to which the Regional School Office had assigned the chairs of support teachers to educational institutions".

- "Following this complaint, the Department of Public Function - Inspectorate for the public function (...) sent the note prot. no. XX of the XX with which, in transmitting the report of Mr. (...), invited the Lazio Regional School Office to formulate the assessments of competence and to provide assurances regarding the observance of the provisions on the matter".

- "The writing Office provided a reply to this request with its own note prot. no. XX of the XX, in which he illustrated the activity within his competence pursuant to the legislation in force, and detailed the case of XX (son of Mr. XX, signatory and author of the complaint) student enrolled at the "Pitocco" school, in a situation of certified disability and therefore recipient of a support teacher, providing attached documentation certifying what was found".

- "pursuant to art. 2-ter paragraph 4 lett. a), of Legislative Decree 30 June 2003, n. 196, it is underlined that the personal data in question have been subject to "communication" to another specific public entity (D.F.P.) performing control functions and inspection activities and not already disclosed or communicated to unidentified third parties and/or private subjects. In fact, the writing office, which within the scope of its functions is required to implement actions for the guarantee of the constitutionally guaranteed right to study, conspicuously consulted by the D.F.P. - Inspectorate of the Public Function, a body with inspection and control prerogatives, responded by providing some of the data at its disposal, carefully evaluated and considered indispensable, for the purposes of a correct and complete classification of the matter".

- "Article 2-sexies paragraph 2 of the Code (...) then lists those treatments that are considered to be of significant public interest - carried out by subjects who perform tasks in the public interest or connected to the exercise of public powers - in certain areas, in a non-exhaustive list of subjects. These include: a) access to administrative documents and civic access; l) control and inspection activities; as well as u) the duties of the national health service and of subjects operating in the health sector".

- "Given that the D.F.P.- Inspectorate for the Public Function carries out, pursuant to art. 60 paragraph 6 of Legislative Decree 30 March 2001, n. 165 ff. mm. supervisory tasks on the compliance of the administrative action with the principles of impartiality and good performance, the undersigned Office has sent its report with reference to the report (of the complainant), attaching the necessary and indispensable certifying documentation. It is hardly necessary to point out that, by means of this report (...), they intended to bring to the attention of the D.F.P. alleged irregularities in the performance of the functions pertaining to the school administration (IC "G. Pitocco" and USR Lazio). Therefore, the undersigned Office deemed it necessary to provide the requested explanations in this regard by attaching suitable and necessary documentation, all duly assessed and considered indispensable in order to prove what was declared. Since the legislation attributes to the D.F.P. supervisory tasks, the requests of this Administration as well as the subsequent interlocutions with the same, can to all effects be traced back to inspection activity, in the context of which the transmission of data must take place in a clear and understandable form".

- “Since this request from the D.F.P. from a party request, or from the (complainant), it was considered appropriate to refer to the specific case in order to illustrate to the Inspectorate for Public Function how the needs presumably at the origin of the (complainant's) report were been met by the school administration in compliance with current legislation".

- "Only the illustration of the specific case correlated by suitable and necessary documentation - which in that case could only be that of the pupil XX - would in fact have allowed this Office to be able to provide evident and irrefutably useful elements for a complete reconstruction of the affair which, starting from September 2018, led the whistleblower to resort to the D.F.P. (...) Therefore, it was not considered possible to provide a comprehensive response to the DFP, in carrying out its inspection activity, without the processing and communication of those attached data and documents, indispensable for the requested investigation purpose".

With a note of the XX (prot. n. XX), the Office, on the basis of the elements acquired, the checks carried out and the facts that

emerged following the preliminary investigation, as well as the subsequent evaluations, notified the Regional School Office for the Lazio, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in article 58, paragraph 2, of the Regulation, inviting the aforesaid holder to produce defense 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 law n. 689 of 11/24/1981).

With the note mentioned above, the Office found that the aforementioned School Office, by sending to the Presidency of the Council of Ministers - Department of Public Function, documentation containing personal data, including data relating to health, concerning the complainant's child, carried out a communication of personal data and data relating to health in the absence of a suitable legal prerequisite and, therefore, in violation of the art. 6 and 9 of the Regulation, of the articles 2-ter and 2-sexies of the Code as well as the principles applicable to the treatment pursuant to art. 5 par. 1, lit. a) and c) of the Regulation.

With a note of the XX (prot. XX) the school administration sent its own defense briefs, representing, among other things, the following:

- “In the introduction, reference is made to the provisions of EU Regulation 2016/679 (G.D.P.R) in art. 6 - Lawfulness of processing - which clarifies that data processing is lawful only if and to the extent that, among other things, it "is necessary to fulfill a legal obligation to which the data controller is subject" and "it is necessary for the execution of a task of public interest or connected to the exercise of public powers vested in the data controller"";
- “it is hoped that no violation can be charged to the undersigned office, since this has paid, on a specific request, with another Public Administration, holder of specific inspection powers, or the Public Function Inspectorate.

The note from the Department of Public Administration - Public Administration Inspectorate prot. no. XX of the XX, in recalling the report of the (complainant), «with which irregularities are feared in the "procedure for assigning school support resources for pupils with disabilities", in particular verified in the I.C. G. Pitocco of Castelnuovo di Porto», invited the Regional School Office for Lazio, «after appropriate verification of the above, to provide assurances regarding compliance with the provisions on the subject, giving direct feedback to the interested party».

In response to this request, the undersigned Office provided a reply, illustrating in advance the activity within its competence and subsequently circumscribing the case of the pupil XX, son of the exponent and enrolled at the Istituto Comprensivo G. Pitocco of Castelnuovo di Porto, for dispel any doubts about the alleged irregularities in particular verified in the I.C. G. Pitocco

of Castelnuovo di Porto.

In fact, through his own report, the (complainant), intended to bring to the attention of the Inspectorate, alleged irregularities in the performance of the functions pertaining to the school administration I.C. “Pitocco and U.S.R. Lazio).

Given the above, the writing office, in order to fulfill the request of the Department of Public Administration, considered it useful and essential to illustrate the operating methods adopted in the matter of assigning teaching support by attaching part of the documentation in its possession, referring to a specific case (the only one that could be indicated as pertaining to the requesting parent, (….) to explain how the allocation of educational support resources actually takes place and how this happened at IC Pitocco.

The intention was thus to clarify to the Public Administration Inspectorate how the needs, at the origin of the complaint (...), had been completely satisfied by the school administration, highlighting the regularity of the "procedure for assigning school support resources" at the school attended by the son of the (claimant), I.C. Pitocco, indeed.

It is not possible to ignore the fact that only through the illustration of the specific case which in that case could only be that of the pupil XX, the applicant's son, could this Administration effectively provide the required insurance, also useful for the reconstruction of the event which since September 2018 it has led the whistleblower to resort to various public administrations, both judicial and administrative, and last but not least to the Department of Public Administration.

For the reasons set out above, the writing Office believes that it has fulfilled a precise regulatory obligation, in sending documentation accompanying a detailed Report issued following a specific request from an inspection body such as the Public Function Inspectorate, which invited the Office to specifically detail the methods of assigning scholastic support to the school in which the XX pupil was enrolled."

- "The writing Office recalls the principle of good faith in the performance of its functions also in the choice of response elements sent with its notes. These elements are part of the XX pupil's file which are carefully kept in this Office and without the evaluation of which (through the attribution of functional diagnosis) it would not be possible to assign resources on school support."

- "However, it is considered important to highlight that, in order to make a complete assessment, the function of control and inspection connected to the exercise of public powers, in the opinion of the writing Office, deserves the widest protection in its performance, so to allow the recipient of the inspection itself the possibility of providing any element deemed useful.

Otherwise, the freedom and secrecy of correspondence between public administrations would be greatly compromised".

3. The legislation on the protection of personal data

Pursuant to the legislation on the subject, the processing of personal data carried out in the public sphere is lawful only if such processing is necessary "to fulfill a legal obligation to which the data controller is subject" or "for the execution of a task of interest public or connected to the exercise of public powers vested in the data controller" (Article 6, paragraph 1, letters c) and e)).

In this regard, it should be noted that the communication of personal data - i.e. "giving knowledge of personal data to one or more specific subjects other than the interested party, the representative of the data controller in the territory of the European Union, the manager or his representative in the territory of the European Union, by persons authorized, pursuant to article 2-quaterdecies, to process personal data under the direct authority of the owner or manager, in any form, including by making them available, consulting or by interconnection " – different from those foreseen by the articles 9 and 10 of Regulation (EU) 2016/679, for the execution of a task of public interest or connected to the exercise of public powers, is permitted if provided exclusively by a law or, in the cases provided for by law, regulation (Article 2-ter of the Code).

With regard to the particular categories of personal data, including those relating to health (in relation to which there is a general prohibition of processing, with the exception of the cases indicated in article 9, paragraph 2 of the Regulation and, in any case, a regime of greater guarantee than other types of data, in particular, due to the effect of article 9, paragraph 4, as well as article 2-septies of the Code), the processing is permitted, when "necessary for reasons of significant public interest on the basis of Union or Member State law, which must be proportionate to the aim pursued, respect the essence of the right to data protection and provide for appropriate and specific measures to protect the fundamental rights and interests of the data subject" (art. 9, paragraph 2, letter g), of the Regulation).

The national legislator has defined the public interest for the processing "carried out by subjects who perform tasks of public interest or connected to the exercise of public powers" as "significant" in the matters indicated, albeit not exhaustively, by art. 2-sexies of the Code, establishing that the related treatments "are permitted if they are provided for [...] by legal provisions or, in the cases provided for by law, by regulations which specify the types of data that can be processed, the operations that can be performed and the reason of significant public interest, as well as the appropriate and specific measures to protect the fundamental rights and interests of the data subject".

The processing of personal data must also take place in compliance with the principles indicated in the art. 5 of the Regulation, including those of "lawfulness, correctness and transparency" as well as "data minimization", according to which personal data must be - respectively - "processed in a lawful, correct and transparent manner in relation to the interested party" as well as "adequate, pertinent and limited to what is necessary with respect to the purposes for which they are processed" (Article 5, paragraph 1, letter a) and c).

4. Outcome of the preliminary investigation.

In the light of the assessments referred to above, it should be noted that the statements made by the data controller in the defense writings for the truthfulness of which one may be called upon to answer pursuant to art. 168 of the Code although worthy of consideration, do not allow the findings notified by the Office to be overcome with the act of initiation of the proceeding and are insufficient to allow the dismissal of the present proceeding, since none of the cases envisaged by the art. 11 of the Regulation of the Guarantor n. 1/2019.

In fact, it appears that the communication of personal data relating to the complainant's child and, in particular, information relating to the state of health of the same, including the diagnostic code indicative of the minor's disability as well as the reference to art. 3, paragraph 3 of the law of 5 February 1992, n. 104, was not necessary in order to respond to the aforementioned request for clarification received from the Department of Public Administration in relation to the alleged irregularities relating to the allocation of support hours reported by the complainant.

In this regard, it should be noted that, although the Regional Education Office is required to present to the Inspectorate for the public function all the elements useful for clarifying the aspects relating to the methods for assigning support professorships, it could have provided the necessary feedback in the case of especially, without communicating, to the aforementioned Department, even the personal data of the minor.

The communication of the specific documentation relating to the boy, in fact, led to an undue circulation of personal data and, in particular, of data relating state of health, not necessary in order to provide feedback to the requests of the Department of Public Administration.

The preliminary assessments of the Office are therefore confirmed and the unlawfulness of the processing of personal data carried out by the Regional School Office is noted, as such Office, by sending to the Presidency of the Council of Ministers - Department of Public Administration, documentation containing personal data including of data relating to health, concerning

the complainant's child, has made a communication of personal data and data relating to health in the absence of a suitable legal prerequisite and, therefore, in violation of the art. 6 and 9 of the Regulation, of the articles 2-ter and 2-sexies of the Code as well as the principles applicable to the treatment pursuant to art. 5 par. 1, lit. a) of the Regulation.

The violation of the aforementioned provisions makes the administrative sanction envisaged by art. 83, par. 5 of the Regulation, as also referred to by art. 166, paragraph 2, of the Code.

5. Adoption of the injunction order for the application of the pecuniary administrative sanction and accessory sanctions (articles 58, paragraph 2, letter i and 83 of the Regulation; article 166, paragraph 7, of the Code).

The Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation as well as art. 166 of the Code, has the power to "impose 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, according to the circumstances of each single case" and, in this context, "the Board [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in whole or in part, on the website of the Guarantor pursuant to article 166, paragraph 7, of the Code" (art. 16, paragraph 1, of the Guarantor's Regulation no. 1/2019).

In this regard, taking into account the 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 pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation.

The aforementioned pecuniary administrative sanction imposed, depending on the circumstances of each individual case, must be determined in the amount taking into due account the elements provided for by art. 83, par. 2, of the Regulation.

In relation to the aforementioned elements, the particular delicacy of unlawfully processed personal data was considered (data relating to health, art. 4, paragraph 1, no. 15 of the Regulation).

However, it is necessary to take into consideration the certainly culpable nature of the violation, as the Regional School Office communicated the personal data of the minor, also relating to health, to the Department of Public Administration, erroneously believing that it was required to do so on the basis of "a precise regulatory obligation" and in the belief that only a detailed illustration of the specific case would have made it possible to respond exhaustively to the Department's request. The administration also collaborated with the Authority during the investigation of this proceeding and there are no previous relevant violations committed by the aforementioned School Office or previous provisions pursuant to art. 58 of the Regulation.

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction also taking into account the phase of first application of the sanctioning provisions, pursuant to art. 22, paragraph 13, of Legislative Decree lgs. 10/08/2018, no. 101, to the extent of 4,000 (four thousand) euros for the violation of articles 5, par. 1, lit. a), 6 and 9, of the Regulation and of the articles 2-ter and 2-sexies of the Code, as a pecuniary administrative sanction withheld, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

In relation to the specific circumstances of the present case, it is believed that the accessory sanction of publication on the website of the Guarantor of this provision should be applied, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Regulation of the Guarantor n. 1/2019.

Finally, it should be noted that the conditions pursuant to art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

ALL THIS CONSIDERING THE GUARANTOR

notes the unlawfulness of the processing carried out by the Ministry of Education, Regional School Office for Lazio for violation of articles 5, par. 1, lit. a), 6 and 9, of the Regulation and of the articles 2-ter and 2-sexies of the Code, in the terms set out in the justification;

ORDER

To the Ministry of Education, Regional School Office for Lazio, with registered office in Viale G. Ribotta, 41 - 00144 Rome. Fiscal Code 97248840585, in the person of the pro-tempore legal representative, to pay the sum of 4,000.00 (four thousand) euros by way of administrative fine for the violations indicated in the justification; 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 fine imposed;

ENJOYS

to the same school office to pay the sum of 4,000.00 (four thousand) euros, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, 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 no. 689/1981;

HAS

- the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code and by art. 16,

paragraph 1, of the Guarantor Regulation n. 1/2019;

- annotation in the Authority's internal register pursuant to art. 17 of the Regulation of the Guarantor n. 1/2019.

Pursuant to art. 78 of the GDPR, of the articles 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, against this provision it is possible to lodge an 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 appellant resides abroad.

Rome, 25 February 2021

PRESIDENT

Station

THE SPEAKER

Station

THE SECRETARY GENERAL

Matthew