

Injunction order against the "Guglielmo Marconi" State Institute of Higher Education - 31 January 2019

Register of measures

no. 24 of 31 January 2019

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, in the presence of Dr. Antonello Soro, president, of dott.ssa Augusta Iannini, vice president, of dott.ssa Giovanna Bianchi Clerici and of prof.ssa Licia Califano, members and of dott. Giuseppe Busia, general secretary;

CONSIDERING the law n. 689/1981 and subsequent amendments and additions and, in particular, the art. 1, paragraph 2, pursuant to which the laws that provide for administrative sanctions are applied only in the cases and for the times considered in them;

HAVING REGARD to the complaint received by this Authority on 26 October 2017 alleging the unlawful processing of personal data by the "Guglielmo Marconi" State Institute of Higher Education (hereinafter "Institute") with registered office in Viareggio , Via Trieste n. 25, for having published, on the institutional website, rankings relating to teaching staff containing data suitable for revealing the state of health of the interested parties;

GIVEN the note requesting information signed by the Department of Public Liberties and Health prot. no. 0040200 of 21 December 2017, addressed to the Institute and in relation to which note the latter did not provide a response within the expected deadline of 22 January 2018;

GIVEN the further note prot. no. 13736/121508, dated 10 May 2018, with which the Guarantor requested information from the Institute pursuant to art. 157 of Legislative Decree 196/2003 containing the "Code regarding the protection of personal data" (hereinafter "Code");

HAVING REGARD to the reply note to the Guarantor prot. 4425/C7-d of 15 May 2018 with which the Institute reported that "(...) the ranking of 2nd tier teachers of the Institute decree n. 1977 published on 25/09/2017 on the website of our Institute for mere material error, it also contained information relating to the state of health of the interested parties. Following the notification of the teacher concerned, this information was immediately deleted from the site (on the same day of the notification);

HAVING REGARD to the note from the Department of Public Liberties and Health prot. n.15872/121508 of 24 May 2018 with

which the Guarantor, ascertained on the basis of the declarations and documentation provided, an unlawful processing of personal data by the Institute for having disseminated, through the publication on the institutional website, rankings concerning the teaching staff, data suitable for revealing the state of health of such staff in violation of art. 22, paragraph 8, of the Code (this, by means of the annotation next to the names concerned, of the letter "S" as a title of preference indicating the category of "invalid and maimed civilians" pursuant to the MIUR Decree of 1 April 2014, attachment 6 relating to the "preference codes"), at the conclusion of the preliminary investigation, he communicated to the Institute that he had not recognized - despite the unlawful conduct put in place - the details to promote the adoption of a prescriptive or injunctive measure by the College, pursuant to article 11, paragraph 1, letter d and 13, paragraph 4, of internal regulation no. 1/2007 of 14 December 2007 (web doc. no. 1477480 which can be found at [www.garanteprivacy.it](http://www.garanteprivacy.it)); this, in consideration of the fact that this conduct had exhausted its effects, as the rankings containing the data suitable for revealing the state of health of the teachers are no longer available on the Institute's website. The Office also communicated that, on the basis of the documents of the instruction The authority, in relation to the above-mentioned conduct not compliant with the regulations applicable at the time of the report, in any case reserved the right to "(...) verify the conditions for contesting the relative administrative violation envisaged by art. 162, paragraph 2 bis, of the Code, in relation to art. 22, paragraph 8") with a possible independent sanctioning procedure";

GIVEN the note prot. no. 16080/121508 of 25 May 2018 with which the Department of Public Liberties and Health sent the documents to the Department of Inspection Activities so that it could evaluate the conditions for the application of the administrative sanction referred to in article 162, paragraph 2-bis, in relation to the dissemination of data suitable for revealing the state of health of the Institute's teaching staff expressly prohibited by art. 22, paragraph 8, of the Code;

CONSIDERING the act prot. no. 21314/121508 of 16 July 2018 with which the Guarantor challenged the "Guglielmo Marconi" State Institute of Higher Education, with registered office in Viareggio, for violating the provision referred to in article 22, paragraph 8, of the Code sanctioned by article 162, paragraph 2-bis of the same Code, for having unlawfully processed data suitable for revealing the state of health of the Institute's teaching staff through the certified posting on the institutional website of rankings bearing the annotation, next to the names concerned, of the letter "S" as the title of preference indicating the category of "invalid and maimed civilians" pursuant to the MIUR Decree of 1 April 2014, attachment 6, relating to the "preference codes";

NOTING that from the administrative report prot. no. 30816/121508 of 18 October 2018, prepared by the Office of the

Guarantor pursuant to art. 17 of the law of 24 November 1981 n. 689, the reduced payment pursuant to art. 16 of law 689/81;

HAVING REGARD to the defense brief, presented, with note prot. no. 6416C7 of 10 August 2018, pursuant to article 16 of the law of 24 November 1981 n. 689, with which the Institute highlighted that it had acted in complete good faith as it misinterpreted the guidelines given by the Guarantor with Resolution no. 17 of 19 April 2007 containing the "Guidelines on the processing of personal data for the purpose of publishing and disseminating deeds and documents of local authorities" published in the Official Gazette no. 120 on 25 May 2007 (web doc n. 1407101 traceable at [www.gdpd.it](http://www.gdpd.it) ), in particular, points 10.2 "Insolvency procedures and rankings" and 10.2.1 "Public tenders" contained in this document. In this regard, the party has, in fact, highlighted that " (...) in substance, as already communicated by the Institute, it was a mere clerical error, in the sense that the agent made a mistake in the concrete application of the hermeneutical data provided by the reference Authority, without the slightest intention of harming the rights of the interested party."

In closing, the Institute, having formulated the request for a hearing with the Guarantor, in relation to the sanction referred to in article 162, paragraph 2-bis, requested, mainly, the filing of the notice of dispute prot. no. 21314/121508 of 16 July 2018 and, subordinately, the application of the minimum statutory amount of the same fine;

HAVING REGARD TO the minutes of the hearing of the parties which took place on 20 November 2018 with which the Institute of Education, in fully recalling the defense briefs already presented, underlined that "(...) the publication took place for an extremely short time since, due to following the complaint of the interested party, the text was immediately modified and republished";

CONSIDERING that the arguments put forward by the Institute do not allow the exclusion of its responsibility.

In fact, with reference to the invoked good faith of the Institute determined by having misinterpreted the guidelines given by the Guarantor with the aforementioned Resolution no. 17 of 19 April 2007 containing the "Guidelines on the processing of personal data for the purpose of publishing and disseminating deeds and documents of local authorities" and, in particular, points 10.2 "Insolvency procedures and rankings" and 10.2.1 " Public competitions" contained in this document, it should be noted that, according to established jurisprudence (Cass. Civ. section I of 21 February 1995 n. 1873; Cass. Civ. section II of 13 March 2006, n. 5426) it is necessary that such good faith or, in the terms of art. 3 of law 689/1981, the error, in order to be excusable, is based on a positive element, extraneous to the agent and capable of determining in him the conviction of the legitimacy of his behavior. This positive element must not be remediable by the interested party with the use of ordinary diligence. The

Institute, as data controller, was diligently required to know and fulfill the obligations required by the applicable legislation in the matter in question, also due to the fact that, in relation to the performance of ordinary institutional functions, it was required to find out about the applicable rules and, with reference to this matter, above all about their interpretation. In fact, the Institute should have mainly known and observed the prohibition on the dissemination of sensitive data imposed by law through the regulatory provision contained in the aforementioned article 22, paragraph 8, of the Code, beyond the guidelines given by the Guarantor in 2007 with the document containing the Guidelines mentioned above;

NOTING that, on the basis of the considerations referred to above, the Institute, in the person of its pro-tempore legal representative, as data controller pursuant to art. 4, paragraph 1, lett. f), and 28 of the Code, is found to have committed a violation of the provision pursuant to art. 22, paragraph 8, of the Code sanctioned by art. 162, paragraph 2-bis, of the same Code, for having carried out an unlawful processing of personal data through the dissemination of data suitable for revealing the state of health of the teaching staff on the institutional website, as specified above;

CONSIDERING the art. 162, paragraph 2-bis of the Code, which punishes the violations indicated in art. 167, including the violation relating to art. 22, paragraph 8, of the same Code with the administrative sanction of payment of a sum ranging from 10,000.00 (ten thousand) to 120,000.00 (one hundred and twenty thousand) euros;

CONSIDERING that, for the purposes of determining the amount of the pecuniary sanction, it is necessary to take into account, pursuant to art. 11 of the law n. 689/1981, of the work carried out by the agent to eliminate or mitigate the consequences of the violation, the seriousness of the violation, the personality and economic conditions of the offender;

DETECTED, with reference to the work carried out by the agent to eliminate or mitigate the consequences of the violation, what was declared in the documents by the owner, according to which "Following the notification of the teacher concerned, this information was immediately deleted from the site (on the same day of the report)";

NOTING, as regards the seriousness of the conduct, that the preliminary investigation revealed that the unlawfulness of the processing is achieved only through an operation of combination between the letter "S" indicated in the ranking and the Decree of the Ministry of Education, University and Research of the 235 of 1 April 2014, which brings this letter back to the category of "civil invalids";

NOTING, as regards the offender's personality and his economic conditions, that it is a public school which carries out important institutional activities in very modest economic conditions;

CONSIDERED, therefore, on the basis of the aforementioned elements evaluated as a whole, to have to determine, pursuant to art. 11 of the law n. 689/1981, the amount of the fine provided for by art. 162, paragraph 2-bis of the Code, to the minimum amount of 4,000.00 (four thousand) euros for the violation of art. 22, paragraph 8, of the same Code, applied in conjunction with art. 164-bis, paragraph 1, of the same Code;

HAVING REGARD to the documentation in the deeds;

HAVING REGARD TO the observations of the Office formulated by the Secretary General pursuant to art. 15 of the Guarantor's regulation n. 1/2000, adopted with resolution of 28 June 2000;

SPEAKER Prof. Licia Califano;

ORDER

to the State Institute of Higher Education "Guglielmo Marconi" with registered office in Viareggio, Via Trieste n. 25, to pay the sum of 4,000.00 (four thousand) euros as a pecuniary administrative sanction for the violation of the provision referred to in article 22, paragraph 8, of the Code sanctioned by article 162, paragraph 2-bis of the same Code , indicated in the motivation;

ENJOYS

to the same Institute to pay the sum of 4,000.00 (four thousand) euros according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law of 24 November 1981, n. 689.

Pursuant to articles 152 of the Code and 10 of Legislative Decree no. 150/2011, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal lodged with the ordinary court of the place where the data controller has his residence, within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 31 January 2019

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

