[doc. web n. 9584474]

Injunction order against the Municipality of Monteiasi - 25 March 2021

Record of measures

n. 107 of 25 March 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 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 / 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;

GIVEN 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;

Professor Ginevra Cerrina Feroni will be the speaker;

WHEREAS

1. Introduction

This Authority has received a complaint from Mr. XX, with which a violation of the legislation on the protection of personal data was contested.

Specifically, as emerged from the preliminary verification carried out by the Office, on the website of the Municipality of Monteiasi, in the area dedicated to the online praetorian register, in the "Administrative documents" section (http: //dgegovpa.it / ...) , it was possible to freely view and download Determination XX, concerning «XX». With this deed, following the «XX», it was determined to «authorize the release of the bank transfer made by Messrs. XX and XX […] in the name and on behalf of XX, at the Banco di Napoli on XX, in favor of the Municipality of Monteiasi of € XX ». The aforementioned determination contained the names of the interested parties and the iban code of the current account - jointly held by them - on which to make the payment.

Attached to the aforementioned determination were: a) the note of the Municipality prot. n. XX of the XX, addressed to the XX, with which the president of the XX association was asked to authorize the release of the bank transfer made by Messrs. XX and XX, containing the same personal data described above; b) the note prot. n. XX of the XX, addressed to the Municipality, containing the declaration issued by the president of the aforementioned association XX (today's complainant) with the related personal data (such as, in addition to the name, the date and place of birth, the residence and the front-back copy of the identity card).

The aforementioned documents were downloadable from the url: http: //dgegovpa.it / ....

The complainant, president of the XX, has also attached to his request to the Guarantor the note sent at the time to the Municipality of Monteiasi del XX (including the copy of the receipt of presentation to the municipal protocol of XX n. XX), with the which had already tried to exercise the rights regarding the protection of personal data through its legal representative (Avv. XX), asking the Municipality to remove at least its identity document, being concerned about the danger of identity theft.

From the preliminary investigation it emerged that the Municipality has not provided any response to the aforementioned request.

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).

In this regard, public entities (such as the Municipality) may disclose "personal data" only if this operation is provided for "by a law or, in the cases provided for by law, by 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", according to which personal data must be "adequate, relevant and limited to what is necessary in compliance to the purposes for which they are processed "(art. 5, par. 1, lett. c, of the RGPD).

The state legislation of the sector also provides that "All the resolutions of the municipality and of the province are published by publication on the praetorian notice, at the headquarters of the body, for fifteen consecutive days, except for specific provisions of the law" (art. 124, paragraph 1, legislative decree no. 267 of 18/8/2000).

With regard to the publication on the praetorian register, since 2014, the Guarantor has provided specific indications to the administrations on the precautions to be taken for the dissemination of personal data online with general provision no. 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 G.U. n. 134 of 12/6/2014 and in www.gpdp.it, doc. web n. 3134436 (currently being updated, but still current in the substantial part).

In the aforementioned Guidelines of the Guarantor it is expressly stated that once the time period for the publication of the deeds and documents in the praetorian register has elapsed:

- "Local authorities cannot continue to disclose the personal data they contain. Otherwise, for the period exceeding the duration envisaged by the reference legislation, an illegal dissemination of personal data would be determined because it is not supported by suitable regulatory conditions […]. In this regard, for example, the permanence on the web of personal data contained in the resolutions of local authorities beyond the term of fifteen days, provided for by art. 124 of the aforementioned d. lgs. n. 267/2000, can integrate a violation of the aforementioned art. 19, paragraph 3, of the Code [n.d.r. today reproduced in art. 2-ter, paragraphs 1 and 3, of the Code], where there is no different legislative or regulatory parameter that provides for its disclosure […]. [In this case] if the local authorities want to continue to keep the deeds and documents published on their institutional website, for example in the sections dedicated to the archives of the deeds and / or legislation of the body, they

must make the appropriate measures for the protection of personal data [,] [ndo] obscures in the published documentation the data and information suitable for identifying, even indirectly, the interested parties "(second part, par. 3.a).

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 Municipality of Monteiasi - by disseminating the data and personal information of the complainant contained in the Determination n. XX and in the related attachments published online described above - has carried out a processing of personal data that does not comply with the relevant regulations regarding the protection of personal data contained in the RGPD. Therefore, with the same note the violations carried out (pursuant to art.166, paragraph 5, of the Code) were notified to the aforementioned Municipality, 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 Municipality of Monteiasi, 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".

Specifically, it was highlighted, among other things, that:

- "In the opinion of the undersigned administration [the] dispute [received] does not find the conditions for the application of the administrative sanction provided for by art. 83, par. 5, lett. a), of the GDPR, ie the violation of the basic principles of the processing of personal data of natural persons ";
- "In defense of the work of this Administration, it should be noted that the European Regulation protects the personal data of natural persons only, thus excluding legal persons, entities and associations, as in the present case";

- "In fact, these are data and information of the complainant who acted exclusively as President of company XX, association XX participating in the negotiated procedure aimed at awarding the concession of a municipal sports facility";

- "Recital 14 is clear in stating:" It is appropriate that the protection provided by this regulation applies to individuals, regardless of nationality or place of residence, in relation to the processing of their personal data. This regulation does not regulate the processing of personal data relating to legal persons, in particular companies with legal personality, including the name and form of the legal person and its contact details. From the rules it clearly emerges that only a natural person can be considered interested in the processing, while neither legal persons, nor entities nor associations are considered as such ";

- "The aforementioned Recital clearly indicates that" name, form and contact details "may also include personal data but such data are not protected by the GDPR, and in the specific case the personal data processed subject to dispute coincide with the contact details of the representative legal entity of the competing association (personal data necessary in order to fully identify the competitor), i.e. the person who has the power to act, to execute the acts in the name and on behalf of the company itself participating in a public entrustment procedure for the management of a municipal sports facility ";

- "Without prejudice to the absorbent effectiveness of the foregoing, it is represented that the XX Determination took place in application of art. 124 of Legislative Decree 267/00 according to which "all the resolutions of the municipality and the province are published by publication on the praetorian notice board" as well as in application of the transparency obligations pursuant to art. 37 of Legislative Decree 33/2013. In fact, if it is true that art. 124 provides that the publication will take place "for fifteen consecutive days", it is also true that the same provision adds "except for specific provisions of the law" and in the case in question it is the specific provision referred to in art. 8 of Legislative Decree no. 33 of 2013 to make the work of this body absolutely legitimate. In fact, the aforementioned article states that "the data, information and documents subject to mandatory publication pursuant to current legislation are published for a period of 5 years". This body therefore complied with a [a] precise regulatory provision ";

- "And it is precisely on the interpretation of the combined provisions of art. 124 TUEL and art. 8 of Legislative Decree 33/13 that the Court of Cassation highlighted that "the term provided for by art. 124 of Legislative Decree 267/00 (publication in the praetorian register for 15 consecutive days) cannot be considered of a peremptory nature (as indirectly confirmed by the guidelines contained in Legislative Decree 33/2013 which, regulating advertising for transparency purposes, has provided for a duration of 5 years) "(see Civil Cassation - Section 3 - n. 20615/2016). In the case in question, it is a negotiated procedure of

assignment under the concession regime for the management of the municipal stadium of Monteiasi carried out pursuant to Legislative Decree no. lgs. 50/2016 (code of public contracts) and consequently "the data, information and documents subject to mandatory publication" referred to in the aforementioned art. 8 are those deriving from art. 37 of Legislative Decree 33/2013 ";

- «Furthermore, the application of the Code of Contracts also conditions the methods of publication, and, pursuant to the aforementioned art. 37, in the current text following the amendment referred to in Legislative Decree no. 97/2016, which postulates the full publication of the administrative provision. This can be seen from the reading of art. 29 of the Code of Contracts "applicable to the case, as mentioned, also in the opinion of the Guarantor - according to which" All the acts of the contracting authorities and contracting entities relating to (...) the award of public service contracts, supplies, works must (...) be published and updated on the "client profile", in the "Transparent Administration" section, with the application of the provisions of Legislative Decree no. 33 "(see Article 29 of Legislative Decree no. 50/2016), for a duration of 5 years";
- "The set of rules referred to above denies in itself the alleged lack of legal basis for the processing of data unjustly and contradictorily contested by the Municipality of Monteiasi in the matter in question, with consequent and evident [in] validity of the complaints in the column" ;
- the «Municipality of Monteiasi, in a collaborative perspective, promptly removed the determination in question from the website, which is therefore no longer visible on the website or traceable with search engines that can be used on the web»;
- "the Municipality of Monteiasi carries out a permanent information and technical path to adapt its document management and archiving system to the discipline introduced by the GDPR by organizing, among other things, training events on the subject for its employees";
- "the Municipality of Monteiasi disabled the option of its document management software that allowed the documents to be viewed in the online Praetorian Register even beyond 15 days, thus ensuring that all documents - after this period temporal of 15 days - are archived and can be consulted only by the internal staff of the public body ".

5. Evaluations of the Guarantor

The issue in the case submitted to the attention of the Guarantor concerns the dissemination of data and personal information of the complainant, president of an association XX (XX) - such as name and surname, date and place of birth, residence, front-back photocopy of the card identity - as well as two other interested parties who acted in the name and on behalf of the

association (name and iban code). These data were contained in the Determination XX of the Municipality of Monteiasi and in the related attachments published online, as part of the administration's decision to reimburse the sums paid by the aforementioned association for participation in a negotiated procedure, from which it had in any case been excluded. , concerning the granting of the management of the municipal stadium under the concession regime.

5.a. On the application of the RGPD to the present case

As part of the investigation opened by this Authority, the Municipality of Monteiasi confirmed, in its defense briefs, the online dissemination of the personal data described.

In this respect, however, the entity believes that it has not violated any provision regarding the protection of personal data, as the data disclosed was attributable to the complainant "who acted exclusively as President of company XX, association XX participating in the procedure negotiated aimed at awarding the concession of a municipal sports facility ", and therefore the related data would not be protected by the RGPD which does not apply to legal persons and their contact details. This would be confirmed, according to the Municipality, by the interpretation offered by recital no. 14 of the GDPR which provides for the non-applicability of the European regulation to the "processing of personal data relating to legal persons", including "the name and form of the legal person" and "its contact details". In this case, as claimed by the Municipality, the personal data disclosed subject to dispute "coincide with the contact details of the legal representative of the competing association (personal data necessary in order to fully identify the competitor), that is the one who has the power to act, to execute the acts in the name and on behalf of the same company participating in a public award procedure for the management of a municipal sports facility ".

In this regard, it is agreed with what is represented in the defensive briefs in the part in which it is correctly objected that the RGPD does not apply to legal persons, entities or associations and to the related contact details (eg: name and address of the headquarters of the XX, any number telephone, etc.) and the need to process the personal data of the legal representative of the association necessary in order to fully identify the competitor.

However, the particularity of the case submitted to the attention of the Guarantor lies in the circumstance of having carried out a specific processing operation consisting in the online dissemination, as well as the data of the XX association - not subject, as mentioned, to the RGPD - also of " personal data ", in some cases certainly not necessary, of the subjects who acted in the name and on behalf of it, such as names and iban code, as well as - in the case of the complainant - date and place of birth,

residence and even, the integral copy of the identity card.

Regardless of the role played in the association, there can be no doubt that the information specifically referred to above clearly refers to identified natural persons, and therefore there is "personal data" falling within the definition of art. 4, par. 1, no. 1, of the RGPD, for which it is not paid in the case referred to in recital no. 14 of the RGPD, with the consequence that the objection raised by the Municipality in this regard is not acceptable, instead the system of guarantees provided for by the European regulation is fully applied. Moreover, any illegal use of such data (such as identity theft) would reverberate its negative effects in the legal sphere of the natural persons to whom they refer and not necessarily in that of the association.

5.b. On the legal basis of the processing and on the times of online publication

In the defense briefs, the Municipality argued that, with reference to the case in question, the determination and the related annexes subject to the complaint, the obligation to disseminate online for the period of 5 years provided for by art. 8 of d. lgs. n. 33 of 14/3/2013 on administrative transparency and not - as contested by the Office - the 15-day term provided for by art. 124 of the d. lgs. n. 267/2000. This is because the latter provision, in addition to providing for the aforementioned term of 15 days, adds the periphrase "except for specific provisions of the law". Furthermore, the relative terms could not "be considered of a peremptory nature".

In this regard, the following is highlighted.

Since 2014, this Authority has provided specific indications to pp.aa. with the aforementioned guidelines on transparency, highlighting that ", considering the profile of the different applicable legal regime, the provisions regulating the disclosure obligations of the administrative action for transparency purposes [to which the regime envisaged by the d. lgs. n. 33/2013 (term of 5 years for maintaining the document on the web, indexing obligation, possibility of reuse, etc.)] from those regulating forms of advertising for different purposes "(see" Introduction "). In this context, “they must be considered extraneous to the object of […] legislative decree [n. 33/2013] all the publication obligations provided for by other provisions for purposes other than those of transparency, such as the obligations of publication for the purposes of legal advertising, supplementary advertising of effectiveness, declarative advertising or news (already illustrated by way of example in the "Introduction" and taken into consideration in the second part of these Guidelines. "These hypotheses clearly include the provisions on the keeping of the praetorian register in local authorities which provide for the obligation to post on the praetorian register for the purpose of legal advertising of all the resolutions of the municipality and the province for fifteen consecutive days (Article 124,

paragraphs 1 and 2, of Legislative Decree No. 267/2000), to which the five-year advertising regime is consequently not applicable, provided for by art.8 of legislative decree n. 33/2013.

This orientation, on the other hand, is also confirmed by the National Anti-Corruption Authority (ANAC) - which is in charge of supervising the online publication obligations for transparency purposes contained in Legislative Decree lgs. n. 33/2013 (see art. 45) - which expressly stated that "The keeping in the praetorian register, also following the replacement of the paper form with the provision of online insertion, does not fall directly within the scope of application of the rules on administrative transparency referred to in Legislative Decree 33/2013. Consequently, ANAC is not responsible for supervising the publication of documents and information published in the online praetorian register "and that the" duration of the publication of documents in the online praetorian register does not coincide, since it is shorter, with the duration of the publication of data on institutional sites within the "Transparent administration" section that art. 8, co. 3, of the legislative decree n. 33/2013 fixed at five years "(see ANAC," FAQ on transparency (on the application of Legislative Decree no. 33/2013 as amended by Legislative Decree 97/2016) ", no. 1.5 and 1.8, in http://www.anticorruzione.it/portal/public/classic/MenuServizio/FAQ/Trasparenza).

As for the peremptory nature or otherwise of the 15-day deadline for the publication of the resolutions in the praetorian notice, this Authority highlighted that the aforementioned deadline certainly does not prevent "local authorities [from] continuing to maintain the documents on their institutional website and the documents published, for example in the sections dedicated to the archives of the deeds and / or regulations of the body ", however, in relation to personal data only, it is necessary to make" the appropriate measures for the relative protection "by providing" once the publication period envisaged [by the consolidated act of local authorities, and in the absence of a different regulatory basis,] to obscure in the published documentation the data and information suitable for identifying, even indirectly, the interested parties "(Guidelines, cit . part two, paragraph 3.a). This is because «the permanence on the web of personal data contained in the resolutions of the local authorities beyond the term of fifteen days, provided for by art. 124 of the aforementioned d. lgs. n. 267/2000, can integrate a violation of the aforementioned art. 19, paragraph 3, of the Code [now art. 2-ter, paragraphs 1 and 3, of the Code], where there is no different legislative or regulatory parameter that provides for its disclosure "(ibidem).

In this context, the reference made by the administration to the sentence of the Court of Cassation no. 20615/2016 does not appear relevant, given that it was a case of a request for compensation for damage rejected by the judges, who considered the person concerned not identifiable and the damage not proven. In the case in question, however, the identifiability of the

complainant, an interested party, certainly cannot be questioned considering that the Municipality has published the complete copy of the relevant identification document and, in any case, any assessment relating to the existence of any damage to the complainant is an aspect not at all taken into consideration by the Office as it does not fall within the competence of the Guarantor, but of the ordinary judge (Article 152, paragraph 1, of the Code).

Finally, as regards the reference made to articles 29 of d. lgs. n. 50 of 18/4/2016 and 37 of d. lgs. n. 33/2013, it should be noted that the aforementioned provisions apply to the acts relating to the «planning of works, works, services and supplies» and «to the procedures for the award of public contracts […]». In the case in question, the thesis of the Entity according to which these articles would be applicable to the negotiated procedure of assignment under the concession regime for the management of the municipal stadium in which determination XX could also fall, in certain respects, can find some basis. , but not to the point of going so far as to consider legitimate the dissemination of personal data in contrast with the principle of data minimization provided for by art. 5, par. 1, lett. c), of the GDPR.

Compliance with this principle implies, in fact, that the data controller is obliged to carry out in any case an analysis aimed at assessing whether the personal data subject to publication are actually "adequate, relevant and limited to what is necessary with respect to the purposes for the which are processed "(Article 5, paragraph 1, letter c, of the GDPR).

In this context, in relation to the purpose of reimbursement (and the relative transparency) of the sum paid by the XX association as an economic offer for participation in the procedure for entrusting the management of the municipal stadium from which it was in any case excluded, the personal data of the interested parties who paid the sum in the name and on behalf of the XX (such as name and iban code), as well as the personal data of the complainant president of the XX (such as date and place of birth, as well as residence) - disclosed on the institutional website and which the Municipality maintains must remain online for a period of 5 years - they are completely disproportionate and unnecessary, in violation of the principle of data minimization pursuant to art. 5, par. 1, lett. c), of the GDPR.

Furthermore, in any case, no provision of law or regulation provides for the online publication of the full copy of the complainant's identification document, the dissemination of which on the web is instead a harbinger of risks related to possible fraudulent use or identity theft.

The Municipality should have carried out these assessments, first of all checking the request to exercise the rights and to remove at least the identification document, made in 2018 by the complainant, worried about the risks of disseminating his

information online. In this way, the interested party would not have needed to make a complaint to the Guarantor with the opening of a specific investigation that led to this proceeding.

6. Outcome of the investigation relating to the complaint presented

For all of the above, 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. This also considering that since 2014 the Authority, in the Guidelines on transparency and online publication mentioned above, has provided all pp.aa. specific indications on how to reconcile the transparency and publicity obligations of the administrative action with the right to the protection of the personal data of the interested parties.

In this context, confirming the preliminary assessments made by the Office in the note prot. n. XX of the XX, the unlawfulness of the processing of personal data carried out by the Municipality of Monteiasi is noted, as the dissemination on the institutional website of the data and personal information of the complainant and other interested parties, contained in Determination XX and in its annexes (protected notes nos. XX of the XX and XX of the XX), published online, is:

a) does not comply with the principle of "minimization" of data - with reference to the clear indication of the name and the iban code of Messrs. XX and XX, as well as the date, place of birth and residence of the complainant - as they are not "limited to what is necessary with respect to the purposes for which they are processed", in violation of art. 5, par. 1, lett. c), of the GDPR;

b) devoid of suitable regulatory conditions with particular reference to the identity card of the complainant, the publication of which is not required by any law or regulation, in violation of art. 2-ter, paragraphs 1 and 3, of the Code; as well as the basic principles of processing contained in articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR;

Considering, however, that the conduct has exhausted its effects, as the personal data subject of the complaint are no longer accessible at the url indicated in the note prot. n. 44912 of 11/26/2020 (http: //dgegovpa.it / ...), without prejudice to what will be said on the application of the pecuniary administrative sanction, the conditions for the adoption of further corrective measures referred to in 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 Municipality of Monteiasi appears to have violated the articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR; as well as art. 2-ter, paragraphs 1 and 3, 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 present case.

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, not belonging to particular categories or to criminal convictions or offenses (articles 9 and 10, of the RGPD), referring to three interested parties for a duration of approximately three years and 10 months. The Municipality of Monteiasi is in any case a small body (just under 5,500 inhabitants), which, following the request of the Office, intervened promptly, collaborating with the Authority during the investigation of this proceeding in order to remedy the violation by mitigating the possible negative effects. In the reply to the Guarantor, various technical and organizational measures implemented pursuant to art. 25-32 of the RGPD and, in any case, there are no relevant previous violations of the RGPD committed by the entity.

Due to the aforementioned elements, assessed as a whole, it is deemed necessary to determine 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 €

4,000.00 (four thousand) for the violation of Articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the RGPD, as well as of art. 2-ter, paragraphs 1 and 3, 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 personal data online in the absence of a suitable legal basis and in violation of the principle of data minimization (Article 5, paragraph 1, letter c, GDPR), it is considered also that the ancillary sanction of the publication of this provision on the Internet site 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 processing carried out by the Municipality of Monteiasi in the terms indicated in the motivation pursuant to Articles 58, par. 2, lett. i), and 83 of the GDPR

ORDER

to the Municipality of Monteiasi, in the person of the pro-tempore legal representative, with registered office in Via Crispi, 1 - 74020 Monteiasi (TA) - C.F. 80010770735 to pay the sum of € 4,000.00 (four thousand) as a pecuniary administrative sanction for the violations mentioned in the motivation;

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to the same Municipality to pay the sum of € 4,000.00 (four 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, March 25, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Cerrina Feroni

THE SECRETARY GENERAL

Mattei