

[doc. web n. 9681085]

Injunction order against the Municipality of Santa Ninfa - April 29, 2021

Record of measures

n. 169 of 29 April 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;

HAVING REGARD to 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;

Rapporteur the lawyer Guido Scorza;

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, from the web addresses [http: // ...](http://...) and [http: // ...](http://...) Council Resolution no. XX of the XX, concerning «Constitution in opposition to the summons for opposition, to the writ of precept of the XX, XX L./Comune Santa Ninfa».

The aforementioned resolution reported in clear text, in the text and in the subject matter, data and personal information of the complainant, such as name and detailed references relating to deeds of precept (and relative opposition) for payments to the Municipality following the initiation of executive proceedings real estate.

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.gdpd.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.

In light of 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 assessments, the Office with note prot. n. XX of the XX has ascertained that the Municipality of Santa Ninfa - by disseminating the data and personal information of the complainant contained in the Council Resolution no. XX of the XX, published online, described above - has carried out a processing of personal data that does not comply with the relevant regulations on 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, possibly, 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 memoirs. The Municipality of Santa Ninfa, 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 represented, among other things, that:

- "provision was made immediately, [...] to immediately rectify the text of the resolution of G.C. n. XX of the XX, [...] obscuring the name from the object, preamble and device of the same and [...] obscuring the vision on the internet from the URL indicated [...] »;
- "[...] the article in the portal was positioned in a section not highlighted. The interested parties involved in the violation are number 1. The subject of the document reports the anonymized information while in the body of the text, due to an error, the name and surname of the person concerned is present ";
- «The publication was negligent due to a technical update of the software house. In fact, the publication in the "resolutions" section for the purpose of transparency "does not provide for the dissemination of the document but only for information in an extract thereof";
- "several times in 2020, training was carried out with the DPO and at the same time communicated to the software house (data processor) to check any document attachments relating to publications by extract. 2020 was very demanding given [a the] covid emergency, it was certainly an involuntary violation ";
- "Even though the offices were closed, we immediately notified the offices to contact the technicians and / or software houses to delete / correct and publish the document immediately".

With a subsequent e-mail of the XXth, the Municipality sent the Guarantor a notification of a violation of personal data pursuant to art. 33 of the RGPD which has no new elements compared to what has already been ascertained by the Office and previously represented by the entity.

Finally, with an e-mail of the twentieth century, the administration confirmed the obscuring of all the web addresses reported from which the deed object of the complaint was downloadable.

5. Outcome of the investigation relating to the complaint presented

The issue that is the subject of the case submitted to the attention of the Guarantor concerns the dissemination of the complainant's personal data and information (such as name; detailed references relating to precept deeds, and relative opposition, for payments to the Municipality following the initiation of proceedings real estate executive), contained in the Council Resolution no. XX of the XX, concerning «Constitution in opposition to the summons for opposition, to the writ of precept of the XX, XX L./Comune Santa Ninfa», published online on the institutional website.

As part of the investigation opened in this regard by this Authority, the Municipality of Santa Ninfa confirmed, in its defense briefs, the online disclosure of the personal data described. In this respect, the body admitted that the disclosure of the complainant's online data was the result of an error, due, among other things, "to a technical update of the software house", also considering that the publication in the "resolutions "For the purpose of transparency" "does not provide for the dissemination of the document but only for information extracted from the same".

The circumstances highlighted in the defense writings examined as a whole, certainly worthy of consideration for the purpose of evaluating the conduct, are however 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, the preliminary assessments of the Office are confirmed with the note prot. n. XX of the XX and the unlawfulness of the processing of personal data carried out by the Municipality of Santa Ninfa is noted, as the dissemination of the data and personal information of the complainant, contained in the aforementioned Council Resolution no. XX of the XX published online is devoid of suitable regulatory requirements for the period exceeding the fifteen days provided for by art. 124, paragraph 1, of the d. lgs. n. 267/2000 for publication in the praetorian register, 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 data controller has declared that he has obscured the personal data of the complainant disseminated online, without prejudice to what will be said on the application of the pecuniary administrative sanction, the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2, of the GDPR.

6. 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 Santa Ninfa appears to have violated 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 has had as its object the online dissemination of personal data, for almost a year, not belonging to particular categories or to criminal convictions or crimes (articles 9 and 10, of the RGPD), referring to a single interested party. The Municipality of Santa Ninfa is in any case a small body (just over 4,900 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, mitigating the possible negative effects. In any case, there are no previous relevant 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 €

2,000.00 (two 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 Santa Ninfa 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 Santa Ninfa, in the person of the pro-tempore legal representative, with registered office in Piazza Libertà n. 1 - 91029 Santa Ninfa (TP) - Tax Code 81000110817 to pay the sum of € 2,000.00 (two thousand) as a pecuniary administrative sanction for the violations mentioned in the motivation;

INJUNCES

to the same Municipality to pay the sum of € 2,000.00 (two thousand), according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the l. n. 689/1981.

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, April 29, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei