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Injunction order against Istituto Comprensivo Statale Crucoli Torretta - 9 July 2020

Register of measures

no. 140 of 9 July 2020

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by Dr. Antonello Soro, president, Prof. Licia Califano and Dr. Giovanna Bianchi Clerici, members and Dr. Giuseppe Busia, 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 GDPR);

HAVING REGARD TO Legislative Decree 30 June 2003, n. 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");

Given the documentation in the deeds;

Given the observations made by the Secretary General 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;

Supervisor Prof. Licia Califano;

WHEREAS

1. Introduction.

The Authority received some reports with which it was represented that the Istituto Comprensivo Statale "Crucoli Torretta" of Crucoli, would have made public, by dissemination on the institutional website, a ranking relating to the students who applied to participate in the XX, publishing a series of information relating to them including "data relating to dispersion, insufficiencies,

ISEE, disability, etc.".

2. The preliminary investigation.

From the preliminary investigation carried out by the Office on the 20th date, it emerged that the aforementioned rankings were visible and freely downloadable at the url: https://... and, in particular at the address: https://...

In this regard, the school has responded to the request for information from this Authority (note prot. n. XX of the XX) with the note prot. no. XX of the XX.

Specifically, in response to the request for information from this Department, the head teacher of the Institute, represented, in particular, that:

- The Administrative Assistant “Mr. (...), as part of the performance of the service referred to the assignment (...), erroneously published on the school website and in the praetorian register, the provisional and final rankings referring to the recruitment of pupils participating in the aforementioned POR Calabria Project , elaborated in the procedural phase and to be kept exclusively in the official records because they contain sensitive data referring to the participating pupils and relating to the economic situation, the insufficient didactic-educational situation and the disability (...) and instead of correctly publishing the rankings containing only the final score assigned to each student (...)";

- "the rankings (...) have been replaced on the Institute's website (...) with rankings containing only the total score attributed to the students (...).

The Office, on the basis of the checks carried out and the elements acquired, also through the documentation sent by the school, and the facts that emerged following the preliminary investigation, as well as the subsequent evaluations, has ascertained that the school, by publishing on the website institution, at the referred to url: https://... and, in particular at the address: https://.., the rankings relating to the students participating in the aforementioned selection, bearing in clear personal information that is not necessary with respect to the purposes pursued with the publication, including the indication of the score obtained by the pupils on the basis of certain indices such as: early school leaving, insufficiencies, ISEE as well as data relating to the health of an interested party, has led to an undue dissemination of personal data.

Therefore, the violations carried out were notified, pursuant to art. 166, paragraph 5, of the Code, to the school, communicating the start of the procedure for the adoption of the measures referred to in article 58, paragraph 2, of the Regulation and inviting the aforementioned Institute to send the Guarantor defensive writings or documents and, possibly, to ask to be heard by the

Authority, within 30 days (article 166, paragraphs 6 and 7, of the Code; as well as article 18, paragraph 1, of law no. 689 of 11/24/ 1981).

In particular, the Office considered that the publication of the aforementioned rankings occurred in violation of the legislation on the protection of personal data, resulting in the processing of personal data:

a) not compliant with the principles of "lawfulness, correctness and transparency" and "data minimization", in violation of art. 5, par. 1, lit. a) and c), of the Regulation;

b) in the absence of a regulatory prerequisite, for the publication of personal information that is not necessary with respect to the purposes pursued with the publication, including the indication of the score obtained by the students on the basis of certain indices such as: early school leaving, insufficiencies, ISEE as well as data relating to the health of a data subject, in violation of art. 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the Regulation and of the art. 2-ter, paragraphs 1 and 3, of the Code;

c) in violation of the ban on the dissemination of data relating to health (Article 9, paragraphs 1, 2, 4, of the Regulation referred to in Article 2-septies, paragraph 8, of the Code).

With a note of the XX (prot. n. XX) the Regent school manager sent the defense briefs, specifying, in particular that: The specific and objective evaluation elements in relation to the disputed violations are provided by the declaration of the D.S. regent a.s. 2018/2019 prof. XX, by Dr. XX who held the position of RDP at the time of the violation and by the documentation present in the documents which has already been sent by the I.C. di Crucoli to the Guarantor in response to the request for information:

- "as part of the selection of the students participating in the POR Calabria Project in question, two rankings had been produced on the basis of the parents' questions: the first drawn up in the procedural phase and to be kept exclusively in the official records containing sensitive data referring to participating pupils relating to the economic situation, the insufficient didactic-educational situation and the disability and which was preparatory to the definition of the total score to be attributed to each pupil; the second, to be published in the praetorian register, was the one containing only the total score assigned to each participating pupil, therefore lacking the columns relating to the partial scores attributed to each of the variables referring to the risk of early school leaving, income situation and disability" there is an error in the publication of the ranking, drawn up in two versions, one of which indicated sensitive data and this was published by mistake. (as per the attached declaration of the Administrative Assistant (...)). Furthermore, in the declaration of the D.S. regent a.s. 2018/2019 (...): "the publication of the first

ranking instead of the second should not be considered a culpable act of voluntary violation of privacy but was only a mere material error also due to the enormous administrative workload deriving from the situation below and consequent presence of a DSGA in charge of the regency, of the Comprehensive School of Crucoli";

- Following the communication by PEC of the Privacy Guarantor (...) the RDP (...) on the XX date provided by PEC the indications for the correction aimed at adapting the processing of data to the criteria of lawfulness and minimization, and on XX from the Institute's website the ranking in which particular categories of data were present has been removed;

- The D.S. regent a.s. 2018/2019 (...) underlines that: "With reference to art. 83 paragraph 2 letters f), i) and j) of the Regulation, which proceeded to promptly initiate a formal disciplinary procedure against the aforementioned administrative assistant (...) closed and sanctioned with a verbal warning also sent to USR Calabria ";

- the Institute, following the notification by PEC of the Privacy Guarantor of the XX (...) produced the information requested with a written response to the Guarantor sent on XX XX and proceeded to remove the ranking;

3. Outcome of the investigation relating to the complaint presented. Applicable legislation.

Pursuant to the relevant legislation, "personal data" is "any information relating to an identified or identifiable natural person ("data subject")" (art. 4, paragraph 1, no. 1, of the Regulation). Furthermore, "an identifiable natural person is one who can be identified, directly or indirectly, with particular reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more characteristic elements of his physical, physiological, genetic, psychic, economic, cultural or social identity" (ibidem).

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 public interest or connected to the exercise of public powers vested in the data controller" (Article 6, paragraph 1, letters c) and e)).

European legislation also provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of this regulation with regard to treatment, in accordance with paragraph 1, letters c) and e), by determining more precisely requirements specific for the treatment and other measures aimed at guaranteeing a lawful and correct treatment (...)" with the consequence that, in the present case, the provision contained in the art. 2-ter of the Code, according to which the operation of dissemination of personal data (such as publication on the Internet) in the public sphere is permitted only when required by law or, in the cases provided for by law, by regulation.

In this context, the processing of personal data must 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" (par. 1, letter a) and c).

In any case, the dissemination of data relating to health is absolutely prohibited (article 9, paragraphs 1, 2 and 4, of the Regulation, article 2-septies, paragraph 8, of the Code), i.e. "personal data pertaining to the physical or mental health of a natural person, including the provision of health care services, which reveal information relating to his state of health" (Article 4, paragraph 1, no. 15; recital no. 35, of the Regulation) .

4. Conclusions.

In the light of the assessments referred to above, taking into account the statements made by the data controller during the investigation, the truthfulness of which may be called upon to answer pursuant to art. 168 of the Code, and considering that, with reference to the present case, the defense briefs produced by the Institute did not produce elements such as to determine the closure of the proceeding, the preliminary assessments of the Office are confirmed, and the illegality is noted of the processing of personal data carried out by the "Crucoli Torretta" state comprehensive school for having disseminated, through the publication on the institutional website, the rankings relating to the students participating in the aforementioned selection, bearing in clear personal information that is not necessary with respect to the purposes pursued with the publication , including the indication of the score obtained by the pupils on the basis of certain indices such as: early school leaving, insufficiencies, ISEE as well as data relating to the health of an interested party, thus determining an undue dissemination of personal data.

This publication therefore took place in violation of the legislation on the protection of personal data and, specifically:

a) in violation of the principles of "lawfulness, correctness and transparency" and "minimization of data", pursuant to art. 5, par. 1," (par. 1, letters a) and c) of the Regulation;

b) in the absence of a regulatory prerequisite for the publication of personal information that is not necessary with respect to the purposes pursued with the publication, including the indication of the score obtained by the pupils on the basis of certain indices such as: early school leaving, insufficiencies, ISEE as well as related data to the health of an interested party, in violation of art. 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the Regulation and of the art. 2-ter, paragraphs 1 and 3, of

the Code;

c) in violation of the ban on the dissemination of data relating to health (art. 9, par. 1, 2, 4, of the Regulation and art. 2-septies, paragraph 8, of the Code).

In this context, considering, in any case, that the conduct has exhausted its effects, given that the school has declared that it has taken steps to remove the ranking from the school site, a circumstance verified by the Office, the conditions for the adoption of corrective measures, pursuant to art. 58, par. 2, of the Regulation.

5. Adoption of the injunction order for the application of the pecuniary administrative sanction (articles 58, paragraph 2, letter i; 83 of the Regulation)

The violation of the articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b); 9, par. 1, 2, 4, of the Regulation; articles 2-ter paragraphs 1 and 3 and 2-septies, paragraph 8, of the Code is subject to the application of the administrative fine pursuant to art. 83, par. 5, letter. a) of the Regulation.

In this regard, the art. 83, par. 3, of the GDPR, provides that "If, in relation to the same processing or related processing, a data controller or a data processor violates, with willful misconduct or negligence, various provisions of this regulation, the total amount of the pecuniary administrative sanction will not exceeds the amount specified for the most serious violation".

In this case, 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, which therefore applies to the present case.

The Guarantor, pursuant to articles 58, par. 2, lit. the); 83 of the Regulation as well as art. 166 of the Code, has the corrective 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, depending on the circumstances of each individual case" and, in this framework, "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 full 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).

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, it was considered that the detected conduct, carried out in violation of the regulations on the protection of personal data, had as its object the dissemination of unnecessary personal data with respect to

the purposes underlying the publication of the rankings including the indication of the score obtained by the pupils on the basis of certain indices such as: early school leaving, insufficiencies, ISEE as well as data relating to the health of an interested party. While this information does not directly provide indications relating to the level of scholastic difficulty in which the minors find themselves, the ISEE indicator and the health of the subjects listed in the rankings, they reveal, in any case, that some of the minors registered in the aforementioned rankings encounter scholastic difficulties economic and health problems. Furthermore, the diffusion, although referring to a small number of subjects, concerned particularly vulnerable people such as minors.

On the other hand, the following were considered: the culpable nature of the conduct since the publication is to be attributed to a mere error by an administrative assistant; that the Institute took action to remove the personal data of the interested parties as soon as it received the request for information and therefore collaborated with the Authority during the investigation of the present proceeding in order to remedy the violation and mitigate its possible negative effects ; that the school has initiated a series of actions aimed at implementing the technical and organizational measures. Furthermore, there are no previous violations of the Regulation pertinent to the school's orders.

Based on the aforementioned elements, evaluated as a whole, 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, it is deemed necessary to determine pursuant to art. 83, par. 2, of the Regulation, the amount of the pecuniary sanction, provided for by art. 83, par. 5, letter. a) of the Regulations, in the amount of 2,000.00 (two thousand) euros for the violation of articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b) of the Regulation; 9, par. 1, 2, 4, of the Regulation, articles 2-ter paragraphs 1 and 3 and 2-septies, paragraph 8, of the Code, as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same Regulation.

In relation to the specific circumstances of the present case, it is also believed, also in consideration of the particular vulnerability of the data subjects involved; the type of data being unlawfully disclosed; that the ancillary sanction of the publication of this provision on the website of the Guarantor 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

Declares, pursuant to art. 57, par. 1, lit. f), of the Regulation, and 144 of the Code, the illegality of the processing of personal data carried out by the Istituto Comprensivo Statale "Crucoli Torretta", for the violation of the articles 5, par. 1, lit. a) and c); 6, par. 1, c) and e), par. 2 and par. 3, letter. b); art. 9, par. 1, 2, 4, of the Regulation; articles 2-ter paragraphs 1 and 3 and 2-septies, paragraph 8, of the Code, in the terms set out in the justification;

ORDER

to the Comprehensive State Institute "Crucoli Torretta", with registered office in Via Nicholas Green snc, 88812 - Crucoli (KR) - Tax Code 91021270797, in the person of the pro-tempore legal representative, to pay the sum of 2,000.00 (two thousand) euros as an administrative fine for the violations indicated in this provision; 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 the term of thirty days, an amount equal to half of the fine imposed;

ENJOYS

to the same Institute, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of 2,000.00 (two 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 n. 689/1981;

HAS

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

Pursuant to art. 78 of the Regulation, of the articles 152 of the Code and 10 of Legislative Decree no. 150/2011, 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, 9 July 2020

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia