

[doc. web n. 9790111]

Injunction order - May 26, 2022

Record of measures

n. 203 of 26 May 2022

## 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 dr. Claudio Filippi, deputy secretary general;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter the "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 (Code regarding the protection of personal data, hereinafter the "Code") as amended by Legislative Decree 10 August 2018, n. 101 on "Provisions for the adaptation of national legislation to the provisions of Regulation (EU) 2016/679";

GIVEN the report of the operations carried out drawn up on 23 September 2021 by the local Police Corps - Aggregation of the local Police of Vallesabbia (Province of Brescia), with which the presence of a video surveillance system was ascertained in the commercial exercise of the individual company called "Turkish City" of Kalemci Musa, located in Gavardo (BS), Largo Ponte n. 28, not compliant with the provisions of art. 13 of the Regulations;

EXAMINED the documentation in deeds;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000;

SPEAKER Prof. Ginevra Cerrina Feroni;

WHEREAS

1. The assessment of the local police force.

With a note received on 30 September 2021, the Local Police Corps - Aggregation of the Vallesabbia Local Police (Province of Brescia) sent this Authority a copy of the report of the operations carried out, on 23 September 2021, at the local site in Gavardo (BS ), Largo Ponte n. 28 of the individual company called "Turkish City" of Kalemci Musa based in XX. The report reports the presence of 3 functioning cameras placed within the aforementioned business and the lack of information signs of

the presence of the cameras.

In fact, during the investigation, the presence of a video surveillance system was detected, consisting of 3 active and functioning cameras, that is, suitable for identifying the interested parties. In the face of the processing of personal data carried out by means of the aforementioned system located within the business, the absence of suitable information was ascertained pursuant to art. 13 of the Regulation.

With a note dated January 20, 2022, the Office, on the basis of the investigations carried out pursuant to the aforementioned service report, notified "Turkish City" in the person of Kalemci Musa, as owner of the aforementioned sole proprietorship, the start of the procedure for the adoption of the measures referred to in Articles 58, par. 2, and 83 of the Regulations, in accordance with the provisions of art. 166, paragraph 5, of the Code, in relation to the violation of art. 5 par. 1, lett. a) and 13 of the Regulations.

The aforementioned sole proprietorship, despite having been informed of the possibility of producing defensive writings or documents in relation to the sanctioning procedure against it, did not send any documentation in this regard.

## 2. The legal framework of the processing carried out

The use of video surveillance systems may result in the processing of personal data in relation to the positioning of the cameras and the quality of the images recorded. This treatment must be carried out in compliance with the general principles contained in art. 5 of the Regulation and, in particular, of the principle of transparency (Article 5, paragraph 1, letter a) of the Regulation) which presupposes that "the interested parties must always be informed that they are about to enter a video surveillance area" (cf. , in this sense, point 3.1. of the video surveillance provision of 8 April 2010 published in Official Gazette no.99 of 29 April 2010, web doc. no. 1712680).

For this purpose, therefore, the data controller must affix suitable information signs according to the indications contained in point 3.1. of the video surveillance provision of 8 April 2010 mentioned above (see, to this effect, also the Faq on video surveillance published on the Authority's website, web doc. no. 9496574).

Similarly, the "Guidelines no. 3/2019 on the processing of personal data through video devices ", adopted on 29 January 2020 by the European Data Protection Committee, in point 7) specify that" with regard to video surveillance, the most important information must be indicated [by the owner ] on the warning sign itself (first level), while further mandatory details can be provided by other means (second level) ". The Guidelines also provide that "such information may be provided in combination

with an icon to give, in a clearly visible, intelligible and clearly legible way, an overview of the treatment envisaged (article 12, paragraph 7, of GDPR). The format of the information will have to adapt to the various locations ". The information should be positioned in such a way as to allow the data subject to easily recognize the circumstances of the surveillance, before entering the monitored area (approximately at eye level) "to allow the data subject to estimate which area is covered by a camera in so as to avoid surveillance or adapt one's behavior, where necessary ".

### 3. The outcome of the investigation and the sanctioning procedure.

On the basis of the assessment carried out by the staff of the local Police Corps - Aggregation of the local Police of Vallesabbia (Province of Brescia) it emerged that the individual company "Turkish City" of Kalemci Musa, as owner, has put in place a treatment of personal data, through a video surveillance system installed at its public sale business located in Gavardo (BS), Largo Ponte n. 28; system turned out to be up and running at the time of the assessment. It was also ascertained that the aforementioned company has not prepared, as it has instead been required to provide suitable information, pursuant to art. 13 of the Regulation, to inform interested parties on the processing of their data, therefore not taking into account the indications formulated in the guidance documents listed above.

It is therefore proven in documents that the aforementioned individual company has carried out a processing of personal data, by means of a video surveillance system, in the absence of the required prior notice. This conduct is in contrast with the provisions of the general principles on the protection of personal data pursuant to art. 5, par. 1, lett. a) and by art. 13 of the Regulation, according to which the owner is required to provide the interested party with all the information relating to the essential characteristics of the processing.

### 4. Order of injunction.

The Guarantor, pursuant to art. 58, par. 2, lett. i) of the Regulations and art. 166 of the Code, has the power to impose a pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation, through the adoption of an injunction order (art. 18 of the law of 24 November 1981, n. 689), in relation to the processing of personal data carried out by the individual company "Turkish City" of Kalemci Musa, by means of the " video surveillance system referred to in the introduction, in violation of art. 5, par. 1, lett. a) and art. 13 of the Regulation, as in the absence of suitable information.

With reference to the elements listed in art. 83, par. 2, of the Regulations for the purposes of applying the pecuniary administrative sanction and its quantification, taking into account that the sanction must be "in each individual case effective,

proportionate and dissuasive" (Article 83, par. 1 of the Regulations), that, in the present case, the following circumstances were taken into consideration:

with regard to the nature, severity and duration of the violation, the conduct of the data controller was taken into consideration, as well as the responsibility related to the non-fulfillment of the obligation to disclose the information to the interested parties; the absence of specific precedents against the company relating to violations of the regulations on the protection of personal data;

the circumstance that the Company has not cooperated with the Authority during the procedure nor has it shown that it has fulfilled its legal obligation.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the financial penalty in the amount of € 2,000.00 (two thousand) for the violation of Articles 5, par. 1, lett. a) and 13 of the Regulations.

In this context, also in consideration of the type of violation ascertained, it is believed that, pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the regulation of the Guarantor n. 1/2019, this provision should be published on the Guarantor's website.

Finally, it is noted that the conditions set out in art. 17 of regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

WHEREAS, THE GUARANTOR

declares, pursuant to art. 57 par. 1, lett. a) and 83 of the Regulation, the unlawfulness of the processing carried out, through the use of the video surveillance system indicated in the introduction, by Mr. Kalemci Musa as owner of the sole proprietorship called "Turkish City", in the terms set out in the motivation, for the violation of Articles 5, par. 1, lett. a) and 13 of the Regulations;

ORDER

pursuant to art. 58, par. 2, lett. i) of the Regulations, to Mr. Kalemci Musa as owner of the individual company "Turkish City" based in XX, to pay the sum of € 2,000.00 (two thousand) as a fine for the violation indicated in the motivation;

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then to the same person to pay the sum of 2,000.00 (two thousand) euros, 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 law n. 689/1981. It is represented that pursuant to art. 166, paragraph 8 of the Code, the offender has the right to settle the dispute by paying - again in the manner indicated in the annex - of an amount equal to half of the sanction imposed within the term referred to in art. 10, paragraph 3, of d. lgs. n. 150 of 1 September 2011 envisaged for the submission of the appeal as indicated below.

HAS

pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the regulation of the Guarantor n. 1/2019, the publication of this provision on the website of the Guarantor and believes that the conditions set out in art. 17 of regulation no. 1/2019.

Pursuant to art. 78 of the Regulation, of art. 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, 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, May 26, 2022

PRESIDENT

Stanzione

THE RAPPOREUR

cerrina Feroni

THE DEPUTY SECRETARY GENERAL

Philippi