

Order injunction against Farpa s.r.l. - September 16, 2021

Record of measures

n. 330 of 16 September 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 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 Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 (Legislative Decree 30 June 2003, n.196, as amended by Legislative Decree 10 August 2018, no. 101, hereinafter the "Code");

GIVEN the annotation of 3 May 2019 sent to the Guarantor by the Carabinieri Station of Ambrogio (FE), concerning the processing of personal data carried out through a video surveillance system installed by the company Farpa s.r.l. at the "La Perla" and "Zaffiro" family home social welfare facilities;

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 Attorney Guido Scorza;

WHEREAS

1. The inspection access carried out by the Carabinieri of Ambrogio (FE) and the investigation of the Department.

1.1. The Carabinieri Station of Ambrogio (FE) sent this Authority, on May 3, 2019, the annotation relating to the inspection access carried out on March 13, 2019 at the "La Perla" and "Zaffiro" family home social welfare structures managed by the company Farpa s.r.l., (hereinafter, the company), during which it was ascertained that the installed video surveillance system had characteristics different from those authorized by the provision of the Territorial Inspectorate of Ferrara-Rovigo of 26 May 2017. In particular, it was ascertained that: the installed cameras also recorded audio and had been placed in a position

other than the authorized one, so as to capture the beds present in the structures; the obligation to provide information to interested parties (guests and family members of the facility, staff operating within the facility) was not properly fulfilled; the system was used to allow the operator on the ground floor to be able to control guests on the first floor from 8 pm to 8 am; neither outside nor at the entrance of the two structures were there information signs.

On 2 August 2019, the Authority invited the company to provide clarifications regarding the processing carried out through the video surveillance system and on 24 August 2019 the company declared that:

to. "The« Family Home »is a« family-type structure, characterized by low assistance intensity, which accommodates up to a maximum of 6 users and is intended for users made up of the elderly, the disabled, adults in difficulty [...] "(v. note dated August 24, 2019, p. 2);

b. "As for the data collected by the audio-video surveillance system, even if recorded on hard disk support, they were never used or treated in any way. In fact, the system automatically overwrote the previous images, based on the capacity of the hard disk, so that what had already been recorded was deleted to make room for the new images "(see cit. Note, p. 3);

c. "The purpose of the installation of the camera system was only that of video surveillance, for security: with the intention of deterring any malicious persons, in order to identify them. [...] the monitor installed inside the room of the assistance operators, also represented, on a practical level, a suitable tool for viewing what was happening in other rooms, to realize if there were any anomalies "(see note cit. , p. 3);

d. "F.A.R.p.A. srl [...], relied on the care of a company that prides itself on being an expert in the sector. Only with hindsight, perhaps it did not turn out to be so, so much so that the checks revealed anomalies in the installation of the cameras (mounting of the same in points other than those authorized) and the signs provided were insufficient, despite the assurances that the system and the signs were in accordance with the law, as per the declaration of conformity issued at the testing of the works "(see cit. note, p. 3);

And. "From the date 13/03/2019 and of the criminal seizure, by the Carabinieri of Ambrogio (FE), there is no longer any video surveillance system of the structures, nor is it the intention of the company F.A.R.p.A. srl to provide for a new installation [...] Furthermore, with effect from 15/04/2019 in order to avoid further misunderstandings [...], the [legal representative] communicated the suspension to the Union of Municipalities Lands and Rivers "(v. cit. note, p. 4);

f. "There is no longer a system for capturing images and audio in the premises concerned, both for the criminal seizure of the

instruments and for the suspension of the activity" (see note cit., P. 4);

g. "Previously the system worked 24 hours" (see cit. Note, p. 4).

1.2. On 8 January 2020, the Office carried out, pursuant to art. 166, paragraph 5, of the Code, the notification to the company of the alleged violations of the Regulation found, in particular with reference to arts. 5, par. 1, lett. a), 13, 88 of the Regulations and art. 114 of the Code.

On 9 July 2020, the hearing of the company took place at the headquarters of the Guarantor, which represented that:

to. "Since the structure is located in an isolated environment, where burglary and theft attempts have also occurred, in order to provide security to the rooms and guests of the structure, [it was] deemed necessary to install the video surveillance, already in 2017, entrusting [yes] to an expert company in the sector [...] which was asked for a certificate of conformity ";

b. "In 2019 the company was subjected to various checks by the police forces and, in particular, in one circumstance the Carabinieri Command highlighted some irregularities in the video surveillance system, immediately seizing the video cameras. At the same time [...] a report was notified [to the legal representative of the company] for the violation of art. 4 of the Workers' Statute [...] which [has] been obliterated ";

c. "The cameras, in the face of [the checks carried out by the Carabinieri], were no longer activated and [we] believe that we will no longer have to use them"; "Images not overwritten at the time of system operation have been destroyed";

d. "The nursing and assistance staff are not employees of Farpa but of [a different company].

However, they were informed of the presence of the cameras through the signs and on the basis of the information provided by the company [which installed the video surveillance system] ";

And. "The alleged violation relating to the incorrect positioning of the cameras with respect to what resulted from the authorization of the Inspectorate is certainly not attributable to Farpa, but to the company that physically carried out the installation";

f. the company acted in "good faith and [in the absence of] willful misconduct", "none of the treatments are currently carried out using video cameras".

2. The outcome of the investigation and the procedure for the adoption of corrective measures. Established violations.

Upon examination of the declarations made to the Authority during the procedure as well as of the documentation acquired, provided that, unless the fact constitutes a more serious crime, anyone, in a proceeding before the Guarantor, falsely declares

or certifies news or circumstances or produces false deeds or documents and is liable pursuant to art. 168 of the Code ("False statements to the Guarantor and interruption of the execution of the tasks or the exercise of the powers of the Guarantor"), it emerges that the company has installed and used a video surveillance system, with specific characteristics that do not comply with the prescribed in the authorization issued by the Territorial Labor Directorate of Ferrara-Rovigo, Ferrara office with provision no. 274/17 of 26 May 2017 nor, more generally, to the regulations on the protection of personal data. In particular, it emerged that: the cameras of the video surveillance system were positioned differently than those authorized by the Inspectorate; the obligation to provide information to the interested parties (including workers) has not been properly fulfilled considering that the absence of information on the processing of data through the video surveillance system has been ascertained. It is also noted that audio recording was envisaged, although within the authorization issued by the Labor Inspectorate it was specified that "wiretapping and / or audio recordings are not allowed".

In this regard, preliminarily, with reference to the declaration of Farpa s.r.l. to be exempt from liability, considering the assurances received from the company that took care of the installation of the video surveillance system, it should be noted that, according to art. 4, par. 1 of the Regulation (point 7), the data controller is "the natural or legal person, public authority, service or other body which, individually or together with others, determines the purposes and means of the processing of personal data". Considering this, Farpa s.r.l. is the person who holds the role of data controller carried out by means of the video surveillance system installed and in use, until the Carabinieri's assessment of 13 March 2019, at the "La Perla" and "Zaffiro" family homes.

It is also specified that the processing of personal data carried out as part of the employment relationship, if necessary for the purpose of managing the relationship itself (see Articles 6, paragraph 1, letter c); 9, par. 2, lett. b) of the Regulations), must be carried out in compliance with the general principles indicated in art. 5 of the Regulation, and, in particular, of the principle of lawfulness, according to which the processing is lawful if it complies with the applicable sector regulations, if applicable (Article 5, paragraph 1, letter a) of the Regulation). Consistent with this approach, art. 88 of the Regulation is without prejudice to the national rules of greater protection ("more specific rules") aimed at ensuring the protection of rights and freedoms with regard to the processing of workers' personal data. The national legislator has approved, as a more specific provision, art. 114 of the Code which, among the conditions of lawfulness of the processing, established compliance with the provisions of art. 4, law 20 May 1970, n. 300. The violation of the aforementioned art. 88 of the Regulation is subject, if the requirements are met, to the

application of a pecuniary administrative sanction pursuant to art. 83, par. 5, lett. d) of the Regulations.

Based on the aforementioned art. 4, l. n. 300 of 1970 the video surveillance equipment "from which also derives the possibility of remote control of the workers' activity can be used exclusively for organizational and production needs, for work safety and for the protection of company assets" and installation in any case, it must be carried out after stipulating a collective agreement with the unitary union representation or with the company union representatives or, if it has not been possible to reach such an agreement or in the absence of the representatives, only if preceded by the issue of a specific authorization from the Labor Inspectorate. The activation and conclusion of this warranty procedure - with the consequent compliance itself with the agreement or authorization - is therefore an essential condition for the installation of video surveillance systems. Violation of this provision is punishable by law (see Article 171 of the Code).

In the present case, the company, after having presented an application and having obtained the authorization of the Labor Inspectorate for the installation of the video surveillance system, did not comply with what is prescribed therein, installing a video surveillance system with characteristics different from what authorized.

The conduct from the date of installation and activation of the video surveillance system and up to its uninstallation, following the investigation by the Carabinieri, therefore constitutes a violation of the principle of lawfulness of processing (Article 5, paragraph 1, lett. a) of the Regulation in relation to art. 114 of the Code) and art. 88 of the Regulation as to the applicable regulations on the matter (see Provv. April 15, 2021, n.136, in www.garanteprivacy.it, web doc. N. 9586936; Provision. October 29, 2020, n. 213, web doc. N. 9518849).

With reference to the unspecified statement of the company, provided during the hearing, according to which the nursing and assistance staff employed are not employees of Farpa s.r.l., but of a third company, with which Farpa s.r.l. would have entered into a contract, with reference to the time of the inspection, this is in contrast with what was ascertained by the police and with the activation, by Farpa s.r.l., of the procedure referred to in art. 4 of the l. May 20, 1970, n. 300 to obtain the authorization for the installation of a video surveillance system presented to the Territorial Inspectorate of Ferrara-Rovigo on May 5, 2017, with additions dated May 25, 2017. The copy of the contract for services in the deeds, moreover, is signed exclusively by the third company, lacking the signature of the legal representative of Farpa s.r.l. ; moreover, this contract does not contain precise indications regarding the service to be tendered or information to support the statements made by the company which is therefore not adequately proven in documents.

Failure to comply, also, with the obligation to provide adequate information to interested parties (guests of the care facility, relatives of the guests, employees) regarding the processing carried out through the video surveillance system constitutes a violation of the provisions of art. 13 of the Regulation: according to this rule, the owner is required to provide the data subject in advance with all information relating to the essential characteristics of the processing. In particular, as regards the installation of a video surveillance system, the Guarantor indicated the conditions of lawfulness of the processing of personal data carried out by means of video surveillance systems with the general provision of 8 April 2010 (published in the Official Gazette no. 99 of 29 April 2010, web doc. No. 1712680).

As part of the employment relationship, as confirmed by the constant orientation of the Authority, the obligation to inform the employee is also an expression of the general principle of fairness (see Article 5, paragraph 1, letter a) of Regulation).

In any case, the company stated that from the inspection carried out by the Ambrogio Carabinieri Station "the cameras [...] have no longer been activated" and that it no longer carries out any processing through the video surveillance system.

3. Conclusions: declaration of illegality of the treatment. Corrective measures pursuant to art. 58, par. 2, Regulations.

For the aforementioned reasons, the Authority believes that the statements, documentation and reconstructions provided by the data controller during the investigation do not allow to overcome the findings notified by the Office with the act of initiating the procedure and that they are not therefore suitable for allowing the filing of this proceeding, since none of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

The processing of personal data carried out by the company through the video surveillance system is, in fact, illegal, in the terms set out above, in relation to articles. 5, par. 1, lett. a), 13, 88 of the Regulation and 114 of the Code.

Therefore, given the corrective powers attributed by art. 58, par. 2 of the Regulation, in light of the circumstances of the specific case, a pecuniary administrative sanction is imposed pursuant to art. 83 of the Regulation, commensurate with the circumstances of the specific case (Article 58, paragraph 2, letter i) of the Regulation).

4. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (Articles 58, paragraph 2, letter i), and 83 of the Regulations; art. 166, paragraph 7, of the Code)

At the outcome of the procedure it appears that Farpa s.r.l. has violated Articles 5, par. 1, lett. a), 13, 88 of the Regulation and 114 of the Code. For the violation of the aforementioned provisions, the application of the pecuniary administrative sanction provided for by art. 83, par. 5, lett. a) of the Regulations, by adopting an injunction order (Article 18, Law 11/24/1981, n. 689).

Considering it necessary to apply paragraph 3 of art. 83 of the Regulation where it provides that "If, in relation to the same treatment or related treatments, a data controller [...] violates, with intent or negligence, various provisions of this regulation, the total amount of the pecuniary administrative sanction does not exceed the amount specified for the most serious violation ", the total amount of the sanction is calculated in such a way as not to exceed the legal maximum provided for by the same art. 83, par. 5.

With reference to the elements listed in art. 83, par. 2, of the Regulation for the purposes of applying the pecuniary administrative sanction and its quantification, taking into account that the sanction must "in any case [be] effective, proportionate and dissuasive" (Article 83, par. 1 of the Regulation), is that, in the present case, the following circumstances were considered:

to. with reference to the willful or negligent nature of the violation and the degree of responsibility of the owner, the conduct of the company and the degree of responsibility of the same has been taken into consideration, which has not complied with the regulations on data protection relating to a plurality of provisions;

b. the absence of specific precedents for the company;

c. the company's cooperation with the Authority in order to remedy the violation and mitigate its negative effects.

It is also believed that they assume relevance, in the present case, taking into account the aforementioned principles of effectiveness, proportionality and dissuasiveness to which the Authority must comply in determining the amount of the sanction (Article 83, paragraph 1, of the Regulation), firstly, the economic conditions of the offender, determined with reference to the financial statements for the year 2019 with respect to which the company recorded a loss for the year. For the purposes of quantifying the sanction, it is also taken into account that the legal representative of Farpa s.r.l., upon the outcome of the criminal proceedings, based on art. 171 of the Code, has already paid for the violation referred to in art. 4, paragraph 2 of the l. 20.5.1970, n. 300 in relation to art. 114 of the Code, an amount equal to one quarter of the maximum established fine. Lastly, the extent of the sanctions imposed even recently in similar cases is taken into account.

In light of the elements indicated above and the assessments made, it is believed, in the present case, to apply against Farpa s.r.l. the administrative sanction for the payment of a sum equal to Euro 1,000.00 (one thousand).

In this context, it is also believed, in consideration of the nature and seriousness of the violations ascertained, that pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019, this provision should be

published on the Guarantor's website.

It is also believed 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

detects the unlawfulness of the processing carried out by Farpa s.r.l., in the person of its legal representative, with registered office in via I Maggio 50 / b, in Copparo (FE), Tax Code 01883060384, pursuant to art. 143 of the Code, for the violation of art. 5, par. 1, lett. a), 13 and 88 of the Regulation and art. 114 of the Code;

ORDER

pursuant to art. 58, par. 2, lett. i), of the Regulations to Farpa s.r.l., in the person of the legal representative, with registered office in via I Maggio 50 / b, in Copparo (FE), C.F. 01883060384, to pay the sum of Euro 1,000.00 (one thousand) as a pecuniary administrative sanction for the violations indicated in this provision;

INJUNCES

therefore, the same Company to pay the aforementioned sum of € 1,000.00 (one 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, and believes that the conditions set out in art. 17 of regulation no. 1/2019. Pursuant to art. 78 of the Regulations, as well as articles 152 of the Code and 10 of Legislative Decree no. 150/2011, an opposition to the ordinary judicial authority may be proposed against this provision, with an appeal filed with the ordinary court of the place identified in the same art. 10, within thirty days from the date of communication of the provision itself, or sixty days if the applicant resides abroad.

Rome, September 16, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE DEPUTY SECRETARY GENERAL

Philippi