[doc. web n. 9689234]

Injunction order against Società Cavourese S.p.A. - May 27, 2021

Record of measures

n. 214 of May 27, 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 / CE, "General Data Protection Regulation" (hereinafter, "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of individuals with regard to to the processing of personal data, as well as to the free circulation of such data and which repeals Directive 95/46 / EC (hereinafter the "Code");

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");

Having seen 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 functioning of the office of the Guarantor for the protection of personal data, Doc. web n. 1098801;

Rapporteur the lawyer Guido Scorza;

WHEREAS

1. The complaint.

With a complaint of the XX, submitted pursuant to art. 77 of the Regulation, it was complained that Cavourese S.p.A. (hereinafter the "Company"), concessionaire of the local public transport service and manager of the public bus lines and the

school transport service of the Metropolitan City of Turin, where the complainant served as a driver, had posted, on a company bulletin board, copy of an act relating to a disciplinary procedure, with mention of the relative provision, with which the suspension from the service of the complainant was ordered.

2. The preliminary activity.

With notes of the XX, prot. n.XX and XX prot. n.XX following the requests for information formulated by the Office with the notes of the XX, prot. n.XX, XX, prot. n.XX and XX, prot. n. XX, the company represented that:

- "the disciplinary measure with the imposition of the sanction of suspension from service for 10 days [...] was delivered solely and exclusively to the employee in a sealed envelope by registered mail";
- "The publication on the company bulletin board of the disciplinary measure against the employee [...] is not true, nor has it ever constituted company practice";
- "in the face of the disciplinary measure issued issued on XX u.s. with note […] prot. XX followed by a subsequent note prot. XX of XX u.s. […] With which it was formalized to the [employee] that the period identified to observe the suspension was set from day XX to day XX ";
- since the interested party "refused to sign, as a receipt, the official copy" of this communication, "for purely practical purposes, the staff responsible for preparing the service, once they became aware of the unavailability due to suspension of the [complainant], decided to report this information with the wording "suspended" without any information relating to the reasons, duration and / or form of the disciplinary measure ";
- according to the procedures normally adopted "the service order is normally displayed on the company bulletin board with the indication, by name, of the shifts assigned to staff for the next day";
- “the preparation of the service, carried out by the coordination staff, takes place with the support of a specific management software. This management system does not include cases of unavailability of the service due to suspension ";
- "in recent months and with exclusive reference to the [... complainant], various [disciplinary measures] of suspension have been imposed, which in fact have upset normal company procedures";
- "in order to ensure the application of the broadest fees regarding the [protection] of personal data of workers [... the Company] has proceeded to modify its internal procedures. No information, even relating to the suspension status of a single employee, will no longer be reported in the service order of the daily services program of the next day ".

On the basis of the elements acquired, the Office notified, with a note of the XX, (prot. No. XX), to the Company, as data controller, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in art. 58, par. 2, of the Regulation, since, even with regard to an isolated case, the organizational solution adopted in the present case would have given rise to a communication of personal data to unauthorized third parties in violation of Articles 5, par. 1, lett. a) and c), 6 of the Regulations and art. 2-ter paragraphs 1 and 3 of the Code, inviting the aforementioned holder to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (Article 166, paragraphs 6 and 7, of the Code; as well as Article 18, paragraph 1, by law no. 689 of 11/24/1981).

The Company sent its defense briefs, with a note of the XX, prot. n.XX (sent on XX), representing, in particular, that:

- the employee "with clear denigrating intentions towards the Company itself, deliberately amplifies the episode by talking about" publication of the disciplinary measure on the company bulletin board "while, as clarified, the published data referred to the word" suspended "reported in the exposition of the daily service ";
- “the management from the point of view of the treatment of the data relating to the suspension at the time of publication of the daily service prepared has revealed a lightness substantially due to a material error of the person in charge of preparing the services;
- "due to the particularity of the situation and the complex of the normal operations of the Company, always very correct towards its employees and all customers, the episode is considered" marginal "because it involved only one person and did not arise from a specific procedure but from a clerical error of an employee. It is also clear that the procedure in question, although questionable, has never set itself according to a purpose nor has it allowed the company to indirectly derive benefits ";
- “it should be noted that the one and only purpose pursued by the Company in publishing service information on the bulletin board is to facilitate the driver in understanding the shift assigned to him for the following day; experience has it that the main reasons for conflict between the Company and staff arise from misunderstandings between the expected shift and the assigned shift ";
- “a person suspended from service is, technically, an absent person. For a service manager, marking the absent people on the service, whatever the cause, is an operational requirement to identify the useful people in the service. Having marked [the complainant's] absence from service with the wording "suspended" is an aspect born of the sole operational need of the head of the service in question not to "forget" that he was unavailable for service. This note also allows you to know exactly when

the driver, after the suspension period, can return to service differently from what happens, for example, for absences due to illness whose duration is never certain ";

- "for the Local Public Transport sector in which Cavourese S.p.A. operates, it is vital to know precisely the number of workers available for the service and when they can be "available". In fact, since it is a "public service", interruptions to users are not allowed, under penalty of high penalties by the Granting Body ";

- "starting from the month of XX, the company procedure for preparing the daily service was radically changed which, with the exception of information relating to the assigned duty shift, reports all cases of non-availability for the service with the sole wording" absent ".

Furthermore, the Company, during the hearing, pursuant to art. 166, paragraph 6, of the Code, has represented that (see protocol report no. XX of the XX):

- "regarding the posting of shifts, the company intends to reiterate its good faith and fairness. Moreover, contrary to what was claimed by the interested party, the entire disciplinary measure was not posted but only the indication of the letter "S" corresponding to his name. This happened because the company needed to notify the disciplinary measure, which ordered its suspension, in compliance with the times and forms of the l. 148 of 1931, applicable to subjects operating in the public transport sector, as the worker refused to receive notification of the disciplinary measure ";

- “the management of attendance and absences is fundamental for the correct and efficient organization of transport services in order not to incur inefficiencies deriving from an uncovered shift. Therefore, the company decided to expose the wording that placed the employee as suspended from service. It should be noted that the information relating to the suspension resulting from the employee's disciplinary procedure does not constitute sensitive data ";

- "In more detail, it is specified that the place where the document was posted was a room within the company, and not a public area, to which only some drivers and authorized personnel could have access. It should also be noted that according to company practice, each driver already knows his shifts with one month's notice and does not need, except in limited cases, to consult the order of service in the common areas. This demonstrates that the conduct did not cause particular damage to the person concerned ";

- "the use of the word suspended by indicating the letter" S "took place to ensure the proper functioning of the company and avoid an additional reason for litigation. The company needed to avoid that, as previously occurred, even in the presence of a

suspension measure, the interested party would still go to work ".

3. Outcome of the preliminary investigation.

The personal data protection discipline provides that the employer can process the personal data of the worker (Article 4, n.1 of the Regulation), if the processing is necessary, in general, and to fulfill specific obligations or tasks. provided for by national or Union legislation, in particular for the management of the employment relationship (art. 6, par. 1, lett. c), 9 par. 2 lett. b), art. 88 of the Regulation).

In this context, the national legislation, based on art. 6, par. 2, of the Regulation provided that the legal basis for the processing attributable to Article 6 par 1 lett. c) and e) of the Regulations must consist of a law or, in the cases provided for by law, a regulation (Article 2-ter, paragraphs 1 and 3, of the Code). This also with regard to processing operations consisting in the "dissemination" and "communication" of personal data.

The employer, the data controller, is in any case required to comply with the general principles regarding the protection of personal data (Article 5 of the Regulation) and must process the data through "authorized" and "trained" personnel. access and processing of data (articles 4, point 10), 29, and 32, par. 4, of the Regulation).

3.1 The processing of personal data carried out as part of the planning of staff shifts.

As is clear from the documents (see document called "shift sheet" of the XX, attached to the complaint) and from the declarations made by the Company during the investigation, the staff assigned to the preparation of the shifts have exposed the XX order of service that reported, in correspondence with the name of the complainant, the indication "suspended". This is stated in order to highlight the unavailability of the complainant at the service.

Subsequently, the Company partially modified its statements, stating, without however providing specific evidence in this regard, that the service order displayed on the company bulletin board contained only the indication of the letter "S" corresponding to the name of the interested party (cf. . minutes of hearing, cit.).

As a preliminary point, it is noted that the personal data of employees cannot be disclosed to subjects other than those who are part of the specific employment relationship (see definitions of "personal data" and "interested party", contained in Article 4 , paragraph 1, 1) of the Regulation) or those who, also taking into account the definition of "third party" contained in art. 4, par.1, 10) of the Regulations, are not entitled to process them, due to the tasks assigned and the organizational choices of the data controller.

In general, according to the position expressed for some time by the Guarantor, only those in charge of preparing shifts are entitled to implement the specific treatments deriving from the management of staff absences in view of the planning of work shifts, unlike other workers assigned to different tasks. In particular, the employees of the transport service cannot be considered, on the basis of the assigned duties, "authorized" to know the reasons for absence or other personal data relating to events concerning health, the private and family sphere or the specific employment relationship of their colleagues (see, Provisions 18 June 2020, n.105, web doc. 9444865 and 2 July 2020, n. 124, web doc. 9445567; see also Provisions 3 July 2014, n.341, web document n.3325317; 31 July 2014, n.392, web doc n.3399423, but see, formerly Guidelines on the processing of personal data of workers for relationship management purposes of work in the public sphere of June 14, 2007, web document no.1417809, see, in particular, paragraphs 5.1, 5.2 and 5.3).

Although the managerial power in the organization of work is also expressed in the processing of communications, service orders or documents aimed at the preparation of work shifts, made known to all employees by posting on notice boards or accessible through access to restricted areas of the company network, the indication in these documents of the reasons for the absence of employees, even when expressed by means of acronyms or acronyms that make it easy to understand the specific reasons for the absence, gives rise to a communication of personal data to unauthorized third parties (cf. - the definition of "communication" of personal data contained in Article 2-ter, paragraph 4, letter a), of the Code; the orientation was also generally confirmed by the Provision containing the requirements relating to the processing of particular categories of data, pursuant to art. 21, paragraph 1 of Legislative Decree 10 August 2018, n. 101, n. 146, of 5 June 2019, doc. web n. 9124510, cf. annex 1, par. 1.5. lett. d). This circumstance is particularly relevant in cases where, such as the one in question, the indication of the reason is suitable for revealing events related to the specific employment relationship of the employee, such as the imposition of a disciplinary sanction.

For these reasons, the posting of the document relating to the duty shifts of the XX in company premises, to which the personnel in charge of transport had access, containing the indication of the reasons for the absence of the employees and, with regard to the complainant, the indication " suspended "or other acronym explaining the reason for the unwillingness to provide the work activity, has made a matter relating to the specific employment relationship between the person concerned and the employer known to the other drivers and employees. These principles have been reiterated more recently by the Guarantor with regard to the processing of personal data carried out through document management systems (see provision of

11 February 2021, n.50 web doc. N. 9562866).

As previously clarified by the Guarantor with regard to similar treatments put in place by a company operating in local public transport, the regular rotation of work shifts and the effective management of the local public transport service can be pursued, in compliance with the regulations. of data protection, making only the summary document of the daily shifts available to service staff, reporting only the information on the presence or absence of some colleagues (without specifying reasons) to provide for the relative replacements (see, Provision 18 June 2020, n.105, web doc. n.9444865)

Given the above, it is believed that, even if it occurred in this single case (according to what was declared by the Company, an organizational solution not foreseen in the ordinary procedures for planning the drivers' shifts would have been adopted), the posting in the company premises of the aforementioned document of the XXth, has entailed the "making available" of the personal data of the interested party (see definition of "communication" pursuant to art. 2-ter, paragraph 4, letter a), of the Code), in favor of other unauthorized personnel, in violation of articles 5 and 6 of the Regulations as well as art. 2-ter and of the Code.

4. Conclusions.

In light of the aforementioned assessments, taking into account the statements made by the data controller during the investigation the truthfulness of which one may be called to answer pursuant to art. 168 of the Code it is noted that the elements provided by the data controller in the defense briefs do not allow to overcome the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the filing of this proceeding, not resorting to moreover, some of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

The processing of personal data, subject of the investigation, took place in full force of the provisions of the Regulation and the Code, as amended by Legislative Decree No. 101/2018, which, therefore, in order to determine the regulatory framework applicable under the temporal profile (art. 1, paragraph 2, of the l. 24 November 1981, n. 689), constitute the provisions in force at the time of the committed violation, which took place on XX.

Therefore, the preliminary assessments of the Office are confirmed, and the unlawfulness of the processing of personal data carried out by the company is noted, in violation of Articles 5 and 6 of the Regulation and 2-ter of the Code.

In this context, considering, in any case, that the conduct has exhausted its effects, given that the company has declared that "starting from the month of XX the company procedure for the preparation of the daily service has been radically changed"

since all cases of "non-availability for the service" are indicated with the sole wording "absent", 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 and ancillary sanctions (articles 58, par. 2, lett. I and 83 of the Regulation; art. 166, paragraph 7, of the Code).

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the Regulations as well as art. 166 of the Code, has the power to "inflict an administrative pecuniary 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 single case "and, 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).

In this regard, taking into account art. 83, par. 3, of the Regulation, in the present case - also considering the reference contained in art. 166, paragraph 2, of the Code - the violation of the aforementioned provisions is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the Regulation.

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 Regulation.

In relation to the aforementioned elements, the nature of the unlawfully processed personal data referred to delicate personal events such as the imposition of a disciplinary sanction, as well as the failure to comply with the indications that, for some time, the Guarantor has provided to public employers has been considered. and private individuals with the aforementioned Guidelines and with numerous decisions on individual cases (see Provv. of 5 June 2019 web doc. n. 9124510 and Provv. 18 June 2020, n. 105 web doc. 9444865).

On the other hand, it was considered: that the processing concerned common data of the interested party; that the Company declared that the incident resulted from the particular conflict in the relationship with the complainant and from the latter's refusal to receive notification of the disciplinary measure; that the Company has expressed extensive cooperation during the investigation by modifying the internal procedures for scheduling and consulting shifts and providing assurance on the adoption of suitable measures to prevent similar episodes from occurring in the future. It was also favorably acknowledged that there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the

Regulation.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the pecuniary sanction, in the amount of 4,000.00 (four thousand) euros for the violation of Articles 5 and 6 of the Regulation and 2-ter of the Code, as a pecuniary administrative sanction, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account the nature of the data being processed, relating to sensitive personal matters such as the imposition of a disciplinary sanction, it is also believed that the additional sanction of the publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019.

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 unlawful the conduct held by the Cavourese S.p.a., described in the terms set out in the motivation, consisting in the violation of articles 5 and 6 of the Regulation and 2-ter of the Code

ORDER

To Società Cavourese S.p.A, in the person of the pro-tempore legal representative, with registered office in Strada del Drosso, 77, 10135 Turin, tax code 00519860019, to pay the sum of 4,000.00 (four thousand) euros as a fine for 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 30 days, an amount equal to half of the sanction imposed;

INJUNCES

to the Cavourese S.p.A company, - without prejudice to the provisions of art. 166, paragraph 8 of the Code - of the Code, 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 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, also recognizing the existence of the conditions referred to 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.

Pursuant to art. 78 of the Regulation, 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, May 27, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei