[doc. web n. 9777156]

Injunction order against the 1st Circolo – Eboli State Didactic Direction - April 28, 2022

Record of measures

n. 148 of 28 April 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by 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 the "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");

GIVEN 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 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

The Authority received a complaint with which it was complained that the State Didactic Direction "Primo Circolo Eboli", with

prot. n. XX of the XX, n. X of the XX, with email of the X and with note prot. n. XX of the XX concerning the "Convocation of the Operational Working Group (GLO) for school inclusion" would have sent the calendar of the GLO meetings organized by the Institute, clearly indicating the names of all the pupils concerned, distinct per class, to parents, teachers and other specialized staff without distinguishing the recipients of communications based on the classes of reference, allowing "in this sense to other parents, to curricular and support teachers not assigned (to individual students), as well as to all specialists or people, in any case unrelated to therapeutic treatment, to become aware of information regarding their children. It was also reported that some of the aforementioned communications carried the e-mail address of the parents who were the recipients of the communications.

2. The preliminary activity.

With notes of the twentieth and twentieth (Prot. N. XX and XX) the Institute has provided feedback to the requests for information formulated by this Authority, representing, in particular, that:

- "The Scholastic Institution has its own GLO group made up of the teachers who make up the Class Council, the support teachers, the parents of the Bes students, the referent of the multidisciplinary team, the referent of the Zone Plan S3, the referent of the Center Medico San Luca, by the President or legal representative of the Territorial DPI Committee of Campania ";

- “as required by current legislation, each member of the GLO group was invited to take part in the meetings scheduled by sending the calendar of meetings via email. For the forwarding of this Calendar, the e-mail addresses that the interested parties communicated to the Secretariat were used, thus allowing their use in order to receive communications relating to the teaching activity ";

- “The administrative assistant has sent the notices to all the subjects involved as all, as required by the law, constitute this working group. In these circumstances, there was no arbitrary or indiscriminate disclosure of personal data, as the recipients are all official interlocutors of a well-defined institutional group ";

- “For mere material error, in the communication of the XX, the assistant sent the calendar including the indication of the e-mail addresses and the indication of the class they belong to”;

- "The notes (prot. N. XX of the XX and n. XX of the XX, email of the XX and note prot. N. XX of the XX) containing the calendar of the GLO convocations have been sent to the complainant parent, to the teachers of the class to which the pupil

belongs and to the specific professional figures who interact with the minor ";

- "For mere clerical error, the administrative assistant sent the communication also and exclusively to those few parents who should have attended the GLO meetings scheduled for that day, but not to other parents or teachers of other classes";

- "The mistake was also made by virtue of the fact that in a small center such as Eboli, the families in question know each other well, attend the same rehabilitation centers, share the same therapists and often meet to exchange advice and opinions relating to the problems of their children ";

- "The parents to whom the communication was sent know each other perfectly and even during the previous school years they were involved in meetings aimed at the inclusion of their children, as happens in every school community";

- "This is a mere material error committed in total good faith, also considering all the problems that the school had to face during this particular and difficult school year and which at times prevented (...) a more careful and punctual control".

With a note dated XX (prot. No. XX), the Office, on the basis of the elements acquired, the verifications carried out and the facts that emerged as a result of the investigation, notified the Didactic Direction, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in Article 58, paragraph 2, of the Regulation, concerning the alleged violations of Articles 5, 6 and 9 of the Regulation, of the articles. 2-ter and 2-sexies of the Code (in the text prior to the amendments made by Legislative Decree 8 October 2021, n. 139, converted, with amendments, by Law 3 December 2021, n. 205), inviting the aforementioned owner to produce to the Guarantor of defensive writings or documents or to ask to be heard by the Authority (art. 166, paragraphs 6 and 7, of the Code; as well as art. 18, paragraph 1, of the l. 24 November 1981, n. 689).

The Institute sent its defense briefs with a note of the 20th prot. n. XX, representing, among other things, that:

- "on XX and XX the notices of the GLO meetings organized by the institution were sent, clearly indicating the names of the pupils concerned, broken down by class and addressed to all parents invited to participate in the relative GLOs envisaged for the days. In particular, the communication sent on XX contains the clear indication of the e-mail addresses of the recipients of the communication ";

- “the data were sent exclusively to the parents of the pupils who should have attended the GLO meetings; parents who, due to previous school experiences of inclusion of disabled children, were perfectly aware of each other's situations by sharing the same therapists and the same problems with exchanges of advice and therapies. Therefore, since the data most likely made

public by the interested parties themselves, the purpose of protecting the law could be lost ";

- "We emphasize (...) the good faith of the operator and the difficulties related to the emergency context in place for the implementation of a timely and systematic control by the school manager";

- "The institute intends to program, in terms of an industrious repentance, further training courses concerning the privacy legislation to be allocated to teachers and Ata staff also with reference to the obligations related to the emergency situation in progress";

- "after the convocation of the XX it appears that the school has sent the convocations of the working group of the inclusion addressing the communications only to the parents of the student concerned, to the teachers of the class to which the latter belongs and to the individuals identified by sector legislation, involved in the therapeutic and training intervention followed by the pupil himself pursuant to article 9 paragraph 10 of Legislative Decree no. 66/2017 ".

3. The legislation on the protection of personal data

Pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter, the "Regulation"), the processing of personal data carried out in the public sphere is lawful when it is necessary "to fulfill a legal obligation to which the data controller is subject "or" for the performance of a task of public interest or connected to the exercise of public authority vested in the data controller "(Article 6, paragraph 1, letter c) and e) and paragraphs 2 and 3 of the Regulations; art 2-ter of the legislative decree n. 196 of 30 June 2003 - Code regarding the protection of personal data, in the text prior to the changes introduced with the d.l. 8 October 2021, n. 139, hereinafter, the "Code").

More generally, European legislation provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of this regulation with regard to processing, in accordance with paragraph 1, letters c) and e), determining with greater precision specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing […] "(Article 6, paragraph 2 of the Regulation).

The national legislation has introduced more specific provisions to adapt the application of the rules of the Regulation, determining, with greater precision, specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing (Article 6, paragraph 2 of the Regulation) and, in this context, has provided that the processing operations consisting in the "dissemination" and "communication" of personal data are allowed only when provided for by a law or, in the cases provided for by law, by Regulation (art. 2-ter, paragraphs 1 and 3, of the Code).

With regard to particular categories of personal data, the processing is, as a rule, permitted where "necessary for reasons of significant public interest on the basis of the law of the Union or of the Member States, which must be proportionate to the purpose pursued, respect the essence of the right to data protection and provide for appropriate and specific measures to protect the fundamental rights and interests of the data subject "(Article 9, paragraph 2, letter g), of the Regulation), provided that the treatments are" provided by European Union law or, in domestic law, by provisions of law or, in the cases provided for by law, of Regulations that specify the types of data that can be processed, the operations that can be carried out and the reason of significant public interest, as well as the appropriate and specific measures to protect the fundamental rights and interests of the data subject "(Article 2-sexies, paragraph 1, of the Code).

In any case, data relating to health, ie those “relating 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” (art. 4, par. 1, n. 15, of the Regulation; see also cons. 35 of the same), due to their particular sensitivity, "they cannot be disseminated" (art. 2-septies, paragraph 8, and art. 166, paragraph 2, of the Code and art.9, par. 1, 2, 4, of the Regulation).

The processing of personal data must also take place in compliance with the principles indicated in art. 5 of the Regulation, including that of "lawfulness, correctness and transparency" according to which personal data must be "processed in a lawful, correct and transparent manner towards the interested party" (Article 5 par. 1, letter a)).

4. Outcome of the preliminary investigation.

As is apparent from the deeds and declarations made by the data controller during the investigation as well as from the assessment made on the basis of the elements acquired, following the investigation and subsequent assessments of this Department, the Institute sent, in various occasions and, in particular, on XX, as well as on XX, the calendar of meetings of the Operational Working Group for school inclusion scheduled for certain days and containing a clear list of all the pupils concerned divided by class, as well as that the subjects required to be informed, without distinction to all parents invited to participate in the GLO meetings scheduled for the days indicated in the calendar, instead of specific communications intended only for the families of the individuals concerned as well as for the teachers of the appearance class and the specific professional figures who interact with the minor.

Some of the aforementioned communications also reported in clear text the e-mail addresses of the recipients of the communication.

In this regard, it is noted that, pursuant to art. 4 paragraph 1, no. 15 of the Regulation are considered data relating to health "personal data relating to the physical and mental health of a natural person, including the provision of health care services, which reveal information on his state of health".

Given the definition of personal data and data relating to health (Article 4, points 1 and 15, of the Regulation), the convening of a meeting of the Operational Working Group for school inclusion, provided for by the sector legislation on disability, clearly indicating the name of the pupil, represents in itself information relating to the state of health of the same pupil for which it is summoned.

The information relating to the convocation of the aforementioned working group, clearly bearing the name of the pupil for which they have been organized, according to the sector regulations, can only be communicated to the parents of the student concerned, to the teachers of the class to which they belong. the latter and the subjects identified by the sector legislation, involved in the therapeutic and training intervention followed by the pupil himself (see art.9, paragraph 10, legislative decree 13 April 2017, n.66).

Finally, with reference to the e-mail addresses reported in the aforementioned communications, it is noted that, for the purposes of evaluating the overall conduct of the data controller, what is represented by the Didactic Direction according to which "the educational institution is has been authorized by the individual for use (by consent) ". This is because consent does not, as a rule, constitute a valid prerequisite of lawfulness for the processing of personal data in the public sphere due to the imbalance of the position of the data subjects with respect to the data controller (see recital 43 of the Regulation). In this case, the provision of e-mail addresses to the school was not aimed at disclosure but exclusively for the purpose of convening, by the Institute itself, the GLO meetings within the terms provided for by the aforementioned sector regulations.

In light of the foregoing considerations, the school, by sending according to the aforementioned modalities, the convocations of the meetings of the Operational Working Group for school inclusion containing personal data relating to the health of the pupils reported therein and the clear indication of the addresses e-mail address of the recipients of the notes themselves, has in fact made the personal data relating to the e-mail addresses of the pupils' family members known also by third parties (other parents, teachers, specialized personnel and other subjects involved in the therapeutic treatment of minors recipients of the e-mails) and made known the condition of disability of the aforementioned pupils to other subjects not required and to be informed, making all the recipients of the same parents, mutually informed of the information relating to the health of their

children, thus giving rise to a "communication" of personal data in violation of articles 5, 6, 9 of the Regulation and 2-ter and 2 sexies of the Code).

Therefore, in consideration of the aforementioned assessments, it is noted that the statements made by the data controller in the defensive writings the truthfulness of which one may be called to answer pursuant to art. 168 of the Code although wort of consideration, they do not allow to overcome the findings notified by the Office with the act of initiation of the procedure and are therefore insufficient to allow the filing of this proceeding, since none of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

The preliminary assessments of the Office are therefore confirmed and the unlawfulness of the processing of personal data carried out by the school in violation of Articles 6 and 9 of the Regulation, of art. 2-ter and 2-sexies of the Code (in the text prior to the amendments made by Legislative Decree 8 October 2021, n. 139, converted, with amendments, by Law 3 December 2021, n. 205), as well as the principles applicable to the processing of referred to in art. 5 par. 1, lett. a) and c) of the Regulations.

In this context, considering, in any case, that the conduct has exhausted its effects, the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2, of the Regulation.

The violation of the aforementioned provisions makes the administrative sanction provided for by art. 83, par. 5 of the Regulations, as also referred to by art. 166, paragraph 2, of the Code.

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 particular sensitivity of the unlawfully processed personal data (data relating to the health of minors, Article 4, paragraph 1, no. 15 of the Regulation) was considered and that the unlawful "communication" of the data personal data, including those relating to the health of the persons concerned, was carried out on more than one occasion.

However, it is necessary to take into consideration that the aforementioned GLO notices, as stated, were sent exclusively to parents who should have attended the meetings scheduled for the specific days indicated in the calendar and not to other parents or teachers of other classes as well as the culpable nature of the violation as the unlawful processing of the aforementioned personal data, also relating to the health of the data subjects, was also committed in consideration of the fact that the parents recipients of the communications "due to previous school experiences of inclusion of disabled children were perfectly knowledge of each other's situations by sharing the same therapists and the same problems with exchanges of advice and therapies "and that the events also took place in the context of the epidemiological emergency from SARS-CoV-2.

The school also collaborated with the Authority during the investigation of this proceeding and there are no previous relevant violations committed by the same or previous provisions pursuant to art. 58 of the Regulation.

On the basis of the aforementioned elements, evaluated as a whole, it is believed to determine the amount of the pecuniary sanction, in the amount of € 1,500.00 (one thousand five hundred) for the violation of Articles 5, 6 and 9 of the Regulation and of the articles 2-ter and 2-sexies of the Code (in the text prior to the changes made by Legislative Decree 8 October 2021, n. 139, converted, with amendments, by Law 3 December 2021, n. 205), as a pecuniary administrative sanction withheld, in pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

In relation to the specific circumstances of this case, it is believed that the ancillary 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 illegal the conduct held by the 1st Circolo - Eboli State Didactic Direction, described in the terms set out in the motivation consisting in the violation of articles 5, 6 and 9 of the Regulation and of the articles 2-ter and 2-sexies of the Code (in the text prior to the changes made by Legislative Decree 8 October 2021, no.139, converted, with amendments, by Law 3 December 2021, no.205)

ORDER

State Didactic Direction 1 ° Circolo - Eboli, with registered office in Piazza della Repubblica - 84025 Eboli (Sa), CF 82004730659, in the person of the pro-tempore legal representative, to pay the sum of € 1,500.00 (one thousand five hundred) by way of pecuniary administrative sanction for the violations indicated in the motivation; 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 1st Circolo - Eboli State Didactic Direction, without prejudice to the provisions of art. 166, paragraph 8 of the Code, to pay the sum of EUR 1,500.00 (one thousand five hundred) 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

- 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 pursuant to 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 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, April 28, 2022

THE VICE-PRESIDENT

Cerrina Feroni

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei