

[doc. web n. 9578258]

Injunction order against the Municipality of San Marco in Lamis - 11 March 2021

Record of measures

n. 91 of 11 March 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 / EC, "General Data Protection Regulation" (hereinafter "RGPD");

GIVEN the d. lgs. June 30, 2003, n. 196 containing the "Code regarding the protection of personal data (hereinafter the " Code ");

GIVEN the general provision n. 243 of 15/5/2014 containing the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other obliged entities", published in the Official Gazette. n. 134 of 12/6/2014 and in [www.gpdp.it](http://www.gpdp.it), doc. web n. 3134436 (hereinafter "Guidelines on transparency");

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](http://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](http://www.gpdp.it), doc. web n. 1098801;

Speaker Dr. Agostino Ghiglia;

WHEREAS

## 1. Introduction

This Authority has received a complaint from Mr. XX, with which a violation of the legislation on the protection of personal data was contested.

Specifically, as emerged from the preliminary verification carried out by the Office, in the area of the institutional website dedicated to the Mayor's ordinances it was possible to view the following documents:

1) trade union ordinance no. XX of the XX ([http: // ...](#)), having as object "XX" ([url http: // ...](#));

2) trade union ordinance no. XX of the XX ([http: // ...](#)) having as object "XX" ([url http: // ...](#)).

The trade union ordinances identified above contained personal data and information of the complainant XX and his family members XX, XX and XX (with indication, however, of the date and place of birth, tax code, residence), in relation to a "removal o demolition of works carried out in the absence of the Building Permit ", with immediate evacuation order (see ordinance no. XX), as well as the order for payment of € 20,000 as an administrative sanction (see ordinance no. XX) .

The documents show that the complainant, before contacting the Guarantor, had already sent a note of the XX to the Municipality, requesting the removal from the institutional website of ordinance no. XX containing their personal data and that the administration has rejected the request with note prot. n. XX of the XX.

## 2. The legislation on the protection of personal data

Pursuant to the relevant regulations, "personal data" is "any information concerning an identified or identifiable natural person (" interested ") and "the natural person who can be identified, directly or indirectly, with particular reference to a identifier such as the name, an identification number, location data, an online identifier or one or more characteristic elements of its physical, physiological, genetic, psychic, economic, cultural or social identity "(art. 4, par. 1 , No. 1, of the GDPR).

In this regard, public entities (such as the Municipality) may disclose "personal data" only if this operation is provided for "by a law or, in the cases provided for by law, by regulation" (Article 2-ter, paragraphs 1 and 3, of the Code), in compliance - in any case - with the principles of data protection, including that of "minimization", according to which personal data must be "adequate, relevant and limited to what is necessary in compliance to the purposes for which they are processed "(art. 5, par. 1, lett. c, of the RGPD).

The state legislation of the sector also provides that "All the resolutions of the municipality and of the province are published by publication on the praetorian notice, at the headquarters of the body, for fifteen consecutive days, except for specific provisions

of the law" (art. 124, paragraph 1, legislative decree no. 267 of 18/8/2000).

With regard to the publication on the praetorian register, since 2014, the Guarantor has provided specific indications to the administrations on the precautions to be taken for the dissemination of personal data online with general provision no. 243 of 15/5/2014, containing the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other obliged entities", published in G.U. n. 134 of 12/6/2014 and in [www.gpdp.it](http://www.gpdp.it), doc. web n. 3134436 (currently being updated, but still current in the substantial part).

In the aforementioned Guidelines of the Guarantor it is expressly stated that once the time period for the publication of the deeds and documents in the praetorian register has elapsed: "Local authorities cannot continue to disclose the personal data contained therein. Otherwise, for the period exceeding the duration envisaged by the reference legislation, an illegal dissemination of personal data would be determined because it is not supported by suitable regulatory conditions [...]. In this regard, for example, the permanence on the web of personal data contained in the resolutions of local authorities beyond the term of fifteen days, provided for by art. 124 of the aforementioned d. lgs. n. 267/2000, can integrate a violation of the aforementioned art. 19, paragraph 3, of the Code [n.d.r. today reproduced in art. 2-ter, paragraphs 1 and 3, of the Code], where there is no different legislative or regulatory parameter that provides for its disclosure [...]. [In this case] if the local authorities want to continue to keep the deeds and documents published on their institutional website, for example in the sections dedicated to the archives of the deeds and / or legislation of the body, they must make the appropriate measures for the protection of personal data [,] [ndo] obscures in the published documentation the data and information suitable for identifying, even indirectly, the interested parties "(second part, par. 3.a).

### 3. Preliminary assessments of the Office on the processing of personal data carried out.

Following the checks carried out on the basis of the elements acquired and the facts that emerged as a result of the investigation, as well as subsequent evaluations, the Office with note prot. n. XX of the XX has ascertained that the Municipality of San Marco in Lamis - by disseminating the personal data and information of the complainant and his family members contained in the documents published online described above - has carried out a processing of personal data that does not comply with the relevant regulations on protection of personal data contained in the GDPR. Therefore, with the same note the violations carried out (pursuant to art.166, paragraph 5, of the Code) were notified to the aforementioned Municipality,

communicating the start of the procedure for the adoption of the measures referred to in Article 58, par. 2, of the RGPD and inviting the aforementioned administration to send to the Guarantor defensive writings or documents and, possibly, to ask to be heard by this Authority, within the term of 30 days (Article 166, paragraphs 6 and 7, of the Code; as well as art.18, paragraph 1, of law no. 689 of 11/24/1981).

#### 4. Defensive memories.

The Municipality of San Marco in Lamis, with the note prot. n. XX of the XX, sent to the Guarantor his defense writings in relation to the violations notified.

In this regard, please note that, unless the fact constitutes a more serious crime, anyone who, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false documents or documents, is liable pursuant to art. 168 of the Code, entitled "False statements to the Guarantor and interruption of the performance of the tasks or the exercise of the powers of the Guarantor".

Specifically, with regard to the conduct held, it was highlighted, among other things, that:

- the "building abuses progressively perpetrated by the complainant, had assumed obvious relevance in the eyes of the citizens of San Marco in Lamis even before the issuing of the aforementioned acts and had achieved notoriety for the evidence and relevance of the violations in an area at risk of landslide, and this in any case regardless of the subsequent adoption of the ordinances object of the complaint ";
- "In the aforementioned ordinances, the dissemination of personal data concerned only a family unit and the permanence of online dissemination was probably caused by an incorrect interpretation of the law (as the complainant himself states and as it appears to be inferred from the response provided by the sector manager general affairs on XX by employees of the urban planning and general affairs sectors, but also by an incomplete configuration of the website, made under the guidance of the supplier company, Data Processor pursuant to art.28 of the RGPD, a factor that it entailed the further dissemination of these documents on the web beyond the period of publication in the praetorian register ";
- "Following the entry into force of the RGPD, this Administration has initiated the process of adaptation to the European Regulation by identifying the Personal Data Protection Manager externally and approving, with the Municipal Council resolution no. 4 of 15/01/2019, the organizational model of the Body regarding the processing of personal data, which contemplates the attribution of the responsibilities of the owner to the bodies of the Municipality in relation to the functions assigned to them by

Legislative Decree 267/2000 and by the municipal statute, assigning, as delegates to the function of owner, specific tasks to the sector managers in charge of the relative organizational positions and dictating instructions and safety guidelines for the processing, by those authorized to the same, of the data managed by the Municipality. It also provided the necessary training to all employees and collaborators [...]. At the same time, a section of the home page of the Municipality's website was dedicated to the issue of data processing, including references to the measures adopted and general information relating to the various services-activities managed ";

- "Starting from the approval of the organizational model [...] the Municipality, following the solicitations of the Personal Data Protection Manager and the Secretary General and of what happened in other Municipalities (see provision of the Guarantor no. 384 of 21/09/2017 on the Municipality of Orta Nova), has repeatedly asked the company providing the management software [...] to guarantee the non-visibility of administrative documents beyond the publication period established by law [...]

»;

- "However, following the notification of the violation by the Guarantor, it was found that the URLs indicated by the Guarantor were still freely accessible the ordinances in question and that:

- from the home page of the Municipality website [...] it appeared that the praetorian register of the historical archive only allowed to view the object and the details of the documents that have served the period of publication;

- from the section called "Access to documents" on the left of the home page there was a hypertext link to the section of the historical archive register that allows you to view only the object and the details of the documents that have served the period of publication:

- by entering the number and date of the ordinances in question or even the names of the persons cited in said documents in a search engine (Google was used in this case), a page of the "Access to documents" website opened - Proceedings administrative - ordinances (not available by accessing instead from the home page) which allowed not only to read the list of documents and their details but also to withdraw the documents themselves, although they had served the period of compulsory publication on the praetorian register ";

- "Therefore, the day after the notified violation was notified, urgent clarifications were requested both from the Heads of the Urban Planning and General Affairs Sectors [...] and from the company [identified in the documents], inviting the latter [...] to urgently provide adequate technical explanation and to always urgently provide for the formal indication and completion of the

operations necessary to prevent further dissemination on the web, free viewing and acquisition of said documents through the internet, having served the mandatory publication period ";

- the company "on the following day, XX, took steps [...] to carry out the technical operations necessary to remove any link and / or access function to the documents in question".

In this context, the Municipality in its defense briefs also asked to consider some extenuating circumstances, including the following circumstances:

- "the reliance of the Municipality on the correct setting [of its conduct], given the contract stipulated with the Company of IT services entrusted with proven reliability, for the license and maintenance of the e-gov services referred to the publication of the documents on the website and [...] the requests for maintenance interventions previously carried out by the Municipality in the sense of not making all the documents accessible, viewable and downloadable from the web at the end of the period of publication on the praetorian register »;

- "the immediate decisive remedial action requested by the Municipality following the violation and carried out without delay by the IT company entrusted with the e-gov services";

- «[the] Municipal Council resolution no. 48 of 20/07/2015, [with which the Municipality] declared the financial distress and currently [is still in progress] the reorganization procedure with the extraordinary liquidation body ";

- "from the date of the disaster there has been no opportunity to hire new human resources with adequate profiles and professionalism and the average age of the employees remaining in service is close to 60 years";

- "Since the end of the twentieth century, despite the scarce financial resources, a training activity for employees has started [...]";

- "Similar violations ascertained against other Municipalities did not lead to the application of penalties, but only to the costs of the procedure (see procedure no. XX of the XX Municipality of Orta Nova".

## 5. Evaluations of the Guarantor

The subject matter of the case submitted to the attention of the Guarantor concerns the dissemination of personal data and information of the complainant and his family (including name, date and place of birth, tax code, residence), contained in the trade union ordinances no. XX of the XX and n. XX of the XX, published online on the institutional website, with which the immediate eviction of buildings was ordered and the order for payment of € 20,000 as an administrative penalty, in the context

of a case related to an open proceeding for works carried out in the absence of the building permit. The complainant, before submitting a complaint to the Guarantor, already in the twentieth century, had asked the Municipality to obscure his personal data, however receiving a denial.

As part of the investigation opened in this regard by this Authority, the Municipality of San Marco in Lamis confirmed, in its defense briefs, the online disclosure of the personal data described. From this point of view, the entity admitted that the dissemination of the online data of the complainant and his family members was the result of an error, since, among other things, "it was probably caused by an incorrect interpretation of the rule by of employees "as well as" an incomplete configuration of the website, carried out under the guidance of the supplier company [...] which led to the further dissemination of these documents on the web beyond the period of publication in the register ". The entity would also have been misled by the fact that by browsing the historical praetorian register on the website it was possible to "view only the object and the details of the documents that have served the period of publication", without personal data. However, another page of the website remained active, clearly referable to the Municipality domain, reachable through external search engines (eg: Google), «[named]“ Access to documents ”- Administrative documents - ordinances», « not available by accessing [...] from the home page »,« which allowed not only to read the list of documents and their details but also to take the documents themselves, even though they had served the period of compulsory publication on the praetorian notice board ».

In this regard, while admitting a possible error also attributable to the company, it should in any case be pointed out that the entity could have avoided the opening of a specific investigation by the Guarantor and the present proceeding, if in the XX it had correctly assessed the request for blackout of the personal data at the time presented by the complainant to whom, however, was reiterated - despite the indications provided by the Guarantor in 2014 in its guidelines on transparency - the legitimacy of the disclosure, rejecting the request and considering, instead, necessary, relevant and not exceeding the personal data published.

As for the circumstance highlighted in the defensive briefs, for which the "building abuses progressively perpetrated by the complainant, had assumed obvious relevance in the eyes of the citizens of San Marco in Lamis even before the issuing of the aforementioned acts and had achieved notoriety for the evidence and the relevance of the violations ", it is not clear how this element could be useful for assessing whether the processing carried out by the Municipality was actually necessary for the exercise of the institutional functions of the body and if the personal data were actually" limited to what is necessary with

respect to the purposes for which they [were] processed "(art. 5, par. 1, lett. c; 6, par. 1, lett. e, GDPR).

#### 6. Outcome of the investigation relating to the complaint presented

For all of the above, the circumstances highlighted in the defense writings examined as a whole, certainly worthy of consideration for the purpose of evaluating the conduct, are not sufficient to allow the filing of this proceeding, since none of the hypotheses provided for by art. 11 of the Guarantor Regulation n. 1/2019. This also considering that since 2014 the Authority, in the Guidelines on transparency and online publication mentioned above, has provided all pp.aa. specific indications on how to reconcile the transparency and publicity obligations of the administrative action with the right to the protection of the personal data of the interested parties.

In this context, the preliminary assessments of the Office are therefore confirmed with the note prot. n. XX of the XX and the unlawfulness of the processing of personal data carried out by the Municipality of San Marco in Lamis is noted, as the dissemination of the data and personal information of the complainant and his family, contained in the trade union ordinances no. XX and XX of the XX published online is:

a) does not comply with the principle of "minimization" of the data - with reference to the clear indication of the date and place of birth, the tax code and residence - considering that they do not appear to have been "limited to what is necessary with respect to purposes for which they are processed ", in violation of art. 5, par. 1, lett. c), of the GDPR;

b) devoid of suitable regulatory requirements for the period exceeding the fifteen days provided for by art. 124, paragraph 1, of the d. lgs. n. 267/2000 for publication in the praetorian register, in violation of art. 2-ter, paragraphs 1 and 3, of the Code; as well as the basic principles of processing contained in articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR.

Considering, however, that the conduct has exhausted its effects, as the data controller declared that he had "carried out the technical operations necessary to remove any connection and / or function of access to documents" subject of the complaint, without prejudice to what will be said about the application of the pecuniary administrative sanction, the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2, of the GDPR.

#### 7. Adoption of the injunction order for the application of the pecuniary administrative sanction (Articles 58, paragraph 2, letter i; 83 of the GDPR)

The Municipality of San Marco in Lamis appears to have violated Articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par.



2 and par. 3, lett. b), of the GDPR; as well as art. 2-ter, paragraphs 1 and 3, of the Code.

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

In the present case, the violation of the aforementioned provisions - also considering the reference contained in art. 166, paragraph 2, of the Code - is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the GDPR, which therefore applies to the present case.

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the RGPD, as well as art. 166 of the Code, has the corrective power to "inflict 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 every single case ". 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).

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 GDPR.

In this sense, the detected conduct in violation of the regulations on the protection of personal data is of a culpable nature and has had as its object the online dissemination of personal data, for more than three and a half years, not belonging to particular categories or to criminal convictions or offenses (articles 9 and 10, of the RGPD), referring to four interested parties, one of which was not yet of age at the time. The Municipality of San Marco in Lamis is in any case a small entity (just over 13,000 inhabitants), which has already declared financial distress and is currently still undergoing the reorganization procedure with the extraordinary liquidation body. The entity also highlighted that it has scarce human resources available and that "from the date of the collapse it [has not] had the possibility of hiring new human resources with adequate profiles and professionalism [considering that] the average age of the remaining employees in service he is almost 60 years old ». Despite the lack of financial resources, he declared that he had "started an employee training activity [...] since the end of 2018". In the reply to the Guarantor, various technical and organizational measures implemented pursuant to art. 25-32 of the RGPD and, in any case, there are no relevant previous violations of the RGPD committed by the entity.

On the other hand, the circumstance highlighted by the Municipality in the defense briefs cannot be taken into consideration for which «similar violations ascertained against other Municipalities did not involve the application of sanctions, but only the costs of the procedure (see procedure no. Municipality of Orta Nova. "This is because the aforementioned provision had as its object an appeal presented to the Guarantor against the aforementioned Municipality under the validity of the regime for the protection of personal data prior to the application of the RGD, with respect to which different procedural and sanctioning rules today repealed and replaced by the complaint procedure and the sanctioning regime provided for by the new RGD, the current Code and the Guarantor Regulation no.

Due to the aforementioned elements, assessed as a whole, it is deemed necessary to determine pursuant to art. 83, para. 2 and 3, of the RGD, the amount of the pecuniary sanction, provided for by art. 83, par. 5, of the RGD, to the extent of € 3,000.00 (three thousand) for the violation of Articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the RGD, as well as of art. 2-ter, paragraphs 1 and 3, of the Code; as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same RGD.

In relation to the specific circumstances of this case, relating to the dissemination of personal data online in the absence of a suitable legal basis and in violation of the principle of data minimization (Article 5, paragraph 1, letter c, GDPR), it is considered also that the ancillary sanction of the publication of this provision on the Internet site of the Guarantor, provided for by art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019.

Finally, it is believed that the conditions set out in art. 17 of the Guarantor Regulation n. 1/2019.

WHEREAS, THE GUARANTOR

detected the unlawfulness of the processing carried out by the Municipality of San Marco in Lamis in the terms indicated in the motivation pursuant to Articles 58, par. 2, lett. i), and 83 of the GDPR

ORDER

to the Municipality of San Marco in Lamis, in the person of the pro-tempore legal representative, with registered office in Piazza Municipio, 6 - 71014 San Marco in Lamis (FG) - C.F. 84001130719 to pay the sum of € 3,000.00 (three thousand) as a pecuniary administrative sanction for the violations mentioned in the motivation;

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to the same Municipality to pay the sum of € 3,000.00 (three 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;
- the annotation in the internal register of the Authority of the violations and measures adopted pursuant to art. 58, par. 2, of the RGPD with this provision, as required by 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 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, March 11, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei