

[doc. web n. 9685245]

Order injunction against the Ministry of Education, University and Research, Regional School Office for Tuscany, Office VIII

Territorial area of the province of Livorno - 21 April 2021

Record of measures

n. 153 of 21 April 2021

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stazione, 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 legislative decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data (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;

Speaker prof. Pasquale Station;

WHEREAS

1. Introduction

The Authority received a report from Mr. XX relating to the publication, on the institutional website of the Ministry of Education, University and Research - Regional School Office for Tuscany - Office VIII - Territorial area of the province of Livorno, of rankings relating to teaching staff containing personal data, including which the tax code of the interested parties.

2. The preliminary activity

From the preliminary assessment carried out by the Office on XX, it emerged that the aforementioned rankings were visible and freely downloadable at the url: [http: //www.usp.livorno.org / ...](http://www.usp.livorno.org/) and [http: //www.usp.livorno.org / ...](http://www.usp.livorno.org/)

These documents, containing the names of about 60 teachers included in the "XX" ranking and the names of about 150 teachers included in the transfer bulletins of the school staff of the secondary school of the province of Livorno, also indicated the tax code of the teaching staff.

In this regard, the Office VIII Territorial Area of the province of Livorno, with note prot. n. XX of the XX provided a response to the Authority's request for information, highlighting, in particular, that:

- "the presence of the aforementioned personal data in the documents, in particular, derives from the need to resolve situations of homonymy present in the school staff surveyed by the Miur, which in the case of particularly widespread surnames, can also be accompanied by the coincidence of the date and / or County of birth. In this sense, therefore, the tax code does not appear to exceed the purpose, as this file format guarantees the correctness of the information ".
- "(...) as a precaution, (The) Office has removed from the files, the data relating to the tax code from its site".

The Authority, on the basis of the checks carried out and the elements acquired, including through the documentation sent by the aforementioned Office, and the facts that emerged as a result of the investigation, as well as subsequent assessments, ascertained that the Entity, by publishing on the website institutional, at the url: [http: //www.usp.livorno.org / ...](http://www.usp.livorno.org/) and [http: //www.usp.livorno.org / ...](http://www.usp.livorno.org/), the rankings of the teachers, bearing in clear text in addition to the identification data of the themselves, even personal information not necessary with respect to the purposes pursued with the publication, such as the tax code, has caused an undue dissemination of personal data which, also due to the indexability of such information by search engines, is likely to cause prejudice to individual confidentiality and to increase the risk of abuse.

Therefore, we proceeded with the notification of the violations carried out, provided for by art. 166, paragraph 5, of the Code, to the aforementioned Administration, communicating the initiation of the procedure for the adoption of the measures referred to in Article 58, paragraph 2, of the Regulation and inviting it to send to the Guarantor defensive writings or documents and, possibly, to ask to be heard by the Authority, within the term of 30 days (Article 166, paragraphs 6 and 7, of the Code; as well as Article 18, paragraph 1, of Law No. 689 of 11/24/1981) .

With a note of the XX (prot. XX n. XX), the Regional School Office for Tuscany has forwarded the documentation produced by

the territorial area of Livorno (notes XX n.XX of the XX with the relative attachments and XX n. XX) clarifying that "With regard to the procedure in question, on the basis of what emerged from the investigation conducted, it is highlighted, in the subdued opinion of the writer, that there are presuppositions that substantiate the case of the excusable error, thus excluding any profile of fault headed by the head of the organizational structure".

In particular, with the aforementioned note XX no. XX of the XX, in the light of the reconstruction "of the facts that in the school year 2018/2019, gave rise to the related violation", the Livorno Territorial Area stated that:

- "the D.M. No. 374/2017 on the updating of the rankings of club and institute teaching staff for the 2017/20 three-year period - in art. 10 expressly provides for the publication of both provisional and definitive rankings. This obligation of publication, at the level of legislation of primary rank, derives both from the provision of articles 50-54, legislative decree n °. 82/2005 DIGITAL ADMINISTRATION CODE and that contained in Articles 2 and following of Legislative Decree 33/2013";
- "the transfer reports, as is known, are provided by the Ministry both in" privacy "and in" non-privacy "mode so that, at the time of their communication to the interested parties, necessarily by publication, they can be disclosed with the guarantee that the Ministry, producer and manager of the same files, has already obscured sensitive data covered by privacy upstream. It appears to the writer that in this circumstance Office VIII did not consider it appropriate to modify this file, as it has already been pre-established by the Ministry".
- "the presence of the aforementioned personal data in the reports in question, could be useful for resolving the frequent situations of homonymy present in the school staff registered in the MIUR database which, in the case of particularly widespread surnames, is often also accompanied by the coincidence of date of birth";
- "The Livorno Territorial Area promptly removed the disputed files from the institutional website, also proceeding to report the criticality to the (...) Regional School Office".

In addition, the Department for the Education and Training System, Directorate General for School Personnel - Office IV of the Ministry represented, in particular that:

- "Article 462 of the Consolidated Law on education (Legislative Decree no. 297 of 16 April 1994) provides that the MIUR peripheral offices competent to arrange the transfer, form a ranking of applicants on the basis of the evaluation table referred to to art. 463, with the observance of the precedence foreseen for particular categories of teachers (...).
- the procedural complexity which necessarily, given the considerable number of participants and the frequent cases of

homonymy and even, as reported by the Provincial School Office, also of the coincidence of date of birth of the various aspirants, determines the need, with the publication of the rankings, to ensure the immediate, precise and unambiguous identification of only the beneficiaries of the movements, thus balancing the need to protect the data with the protection of the interest of the same teacher to have exact certainty of the outcome of his or her request for mobility "

- (...) to ensure that interested parties have the right to know their position in the ranking with immediacy and certainty in the time and manner established by current legislation with reference to the correct start of the school year, always in compliance with the principle of data minimization, the Administration has decided to favor the inclusion of the tax code of the interested parties among the personal data necessary and pertinent with respect to the legal advertising purpose of the publication. On the contrary, it is considered with reasonable certainty that the failure to enter the tax code, due to the large number of interested parties which represents a distinctive trait of school staff compared to other categories of public employment, would not have allowed the purpose of the publication to be achieved. which is directly connected to the exercise of the rights of the interested parties. The exercise of these rights is to be considered a priority, as it is functional to the timely management of all the procedures related to the start of the school year, with respect to the indirect dissemination of personal data inferable from the tax code, and among other things already present in the ranking, with the exception of the municipality of birth.

3. Outcome of the investigation relating to the complaint presented. Applicable law

Pursuant to the regulations on the subject, "personal data" is "any information concerning an identified or identifiable natural person (" interested party ") " (Article 4, par. 1, no. 1, of the Regulation). Furthermore, "the natural person is considered identifiable who can be identified, directly or indirectly, with particular reference to an identifier such as the name, an identification number, location data, an online identifier or to one or more characteristic elements of his physical, physiological, genetic, psychic, economic, cultural or social identity "(ibidem).

The processing of personal data carried out in the public sphere is lawful only if such processing is necessary "to fulfill a legal obligation to which the data controller is subject" or "for the execution of a task of public interest or connected to the exercise of public authority vested in the data controller "(art. 6, par. 1, lett. c and e).

The European legislation also 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 more precisely the requirements specific for the treatment and other measures aimed at guaranteeing a lawful and

correct treatment (...) "with the consequence that, in the present case, the provision contained in art. 2-ter of the Code, according to which the dissemination of personal data (such as publication on the Internet) in the public sphere is permitted only when required by a law or, in the cases provided for by law, by regulation.

In this context, the processing of personal data must take place in compliance with the principles indicated in art. 5 of the Regulation, including those of "lawfulness, correctness and transparency" as well as "data minimization", according to which personal data must be - respectively - "processed in a lawful, correct and transparent manner towards the interested party" as well as "Adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed" (par. 1, lett. A) and c).

With particular reference to the publication of the rankings, moreover, the Guarantor in provision no. 134 of 15 May 2014, containing the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purposes of advertising and transparency on the web by public entities and other obliged entities" (in www.gpdp.it, web doc. no. 3134436, being updated) clarified that "only the relevant and not excessive data referring to the interested parties must be disclosed" and that "Therefore, data concerning the contact details of the interested parties cannot be published (think of fixed or mobile telephone users, the residential or e-mail address, the tax code, the Isee indicator, the number of disabled children, the results of psycho-aptitude tests or educational qualifications)". Similarly, in provision no. 23 of 14 June 2007, containing "Guidelines on the processing of personal data of workers for the purpose of managing the employment relationship in the public sphere" (in www.gpdp.it, web doc. No. 1417809), the Authority had highlighted that: "It is not lawful to include other types of irrelevant information in the ranking documents to be published, such as, for example, fixed or mobile telephone numbers or the tax code."

4. Further investigations by the Office.

On the occasion of the checks carried out by the Office in relation to the circumstances to be assessed pursuant to art. 83, par. 2, of the Regulations for the purpose of quantifying the sanction applicable to the specific case, it was possible to verify that the aforementioned personal data of the teachers are, to date, still accessible through the aforementioned url:

<http://www.usp.livorno.org/> ... and <http://www.usp.livorno.org/> ...

It therefore appears that Office VIII - Territorial area of the province of Livorno, continues to make the personal data of the teachers included in the aforementioned rankings accessible, in the manner described above.

5. Conclusions

The case submitted for examination by the Guarantor therefore has as its object the lawfulness of the dissemination, by Office VIII - Territorial area of the province of Livorno, on its institutional website, of the tax codes of the teachers included in the aforementioned rankings.

As a preliminary point, it should be noted that professional associations, like other public entities, can process personal data only in the cases in which such processing is necessary for the performance of the institutional purposes pursued (Article 6, paragraph 1, letter c) and e)) and find their basis in a provision that has the characteristics referred to in art. 2-ter of the Code. In this regard, it should be noted that the sector legislation referred to by the administration does not legitimize the dissemination of the teachers' tax code and that such dissemination cannot be justified even by the alleged "need to resolve situations of homonymy present in the school staff surveyed by the Ministry of Education" taking into account that the aforementioned rankings do not appear to contain cases of homonymy and that, in any case, the possible presence of homonyms would not have been suitable to justify the publication of the tax codes of the interested parties.

In light of the aforementioned assessments, the statements made by the data controller during the investigation, the truthfulness of which may be called upon to respond pursuant to art. 168 of the Code, it should be noted that these elements, although worthy of consideration, do not, however, allow us to overcome the findings notified by the Office with the note of XX (prot. No. XX) and are not sufficient to allow the filing of this proceeding, however, 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 administration is noted for having disseminated on the institutional website, at the url:

<http://www.usp.livorno.org/>. .. and <http://www.usp.livorno.org/> ... rankings of teaching staff bearing in clear not only the identification data of the teachers themselves, but also personal information not necessary with respect to the purposes pursued with the publication, such as the tax code , thus causing an undue dissemination of personal data which, also due to the indexability of such information by search engines, is likely to prejudice individual confidentiality and increase the risk of abuse (see in this regard to the publication of irrelevant data contained in school rankings, Provv. 6 June 2013, n. 275, web doc. n. 2536184, 2536409 and 2535862).

It should be noted that the processing of data of the interested parties, which occurred in violation of the regulations on the

processing of personal data, began with the publication of the aforementioned rankings on the administration website and is still ongoing.

It follows that the treatments in question were carried out in full force of the provisions of the Regulation and the Code and that, in order to determine the regulatory framework applicable in terms of time (Article 1, paragraph 2, of Law 24 November 1981, 689), these constitute the provisions in force at the time of the violation committed.

This publication took place in violation of the legislation for the protection of personal data and, specifically in violation of the principles of "lawfulness, correctness and transparency" and "data minimization", pursuant to art. 5, par. 1, lett. a) and c) of the Regulations.

6. Corrective measures (Article 58, par. 2, letter f of the Regulation)

As ascertained during the investigation, Office VIII, Territorial Area of Livorno, continues to make the personal data of the teachers enrolled in the aforementioned rankings available through the aforementioned links.

Art. 58, par. 2, lett. f), of the Regulation provides that the Guarantor has the corrective powers to "impose a temporary or definitive limitation to processing, including the prohibition of processing".

In this context, it is considered necessary, due to the unlawfulness of the processing carried out, to have, pursuant to art. 58, par. 2, lett. f), the limitation of treatments in progress by prohibiting the school office from any further dissemination of the personal data of the teachers included in the rankings in question.

Pursuant to art. 157 of the Code, Office VIII will also have to communicate to this Authority the initiatives undertaken in order to implement the aforementioned order pursuant to the aforementioned art. 58, par. 2, lett. f) within thirty days of notification of this provision.

7. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (articles 58, par. 2, lett. l 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, the violation of the aforementioned provision is subject to the application of the pecuniary administrative sanction 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, it was considered that the detected conduct, held in violation of the regulations on the protection of personal data, had as its object the dissemination of personal data (tax code) not necessary with respect to the purposes underlying the publication of the rankings, referred to about 200 subjects; such personal data are still accessible on the web.

The violations derive from the publication of rankings relating to teaching staff on the institutional website of the Livorno School Office; in relation to forms of dissemination similar to those in question, in the past, the Guarantor has adopted the aforementioned "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purposes of advertising and transparency on the web by public subjects and other obliged entities "with which he had provided a series of indications to public subjects to comply with the provisions on data protection when they distribute personal data on the web.

In this context, it should also be considered that, on the basis of the documents, the episode appears to have been caused by negligent behavior due to the erroneous belief that the publication of the tax code of the interested parties was necessary in order to avoid alleged cases of homonymy as well as difficulties deriving from the management of a considerable amount of questions. The school administration collaborated with the Authority during the investigation of this proceeding in order to remedy the violation and mitigate its possible negative effects, but the measures taken are not sufficient. In fact, although Office VII attempted to remove the personal data in question from the rankings, at present this information is still visible on the web. Furthermore, there are no previous violations of the relevant Regulations committed specifically by Office VIII, Territorial area of Livorno.

Due to the aforementioned elements, assessed as a whole, it is considered to determine the amount of the pecuniary sanction, in the amount of € 3,000.00 (three thousand) for the violation of Article 5, par. 1, lett. a) and c); of the Regulation as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same

Regulation.

In relation to the specific circumstances of this case, it is also considered, also in consideration of the high number of interested parties involved and the time span from the time of publication to today's date, that the ancillary sanction of the publication of this provision on the site should be applied. web of the Guarantor, 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

detected the unlawfulness of the processing carried out by the Ministry of Education, University and Research, Regional School Office for Tuscany, Office VIII - Territorial area of the province of Livorno, with registered office in Via Galilei 40, C.F. 80004140499, in the person of the pro-tempore legal representative, for the violation of art. 5, par. 1, lett. a) and c) of the Regulations, within the terms set out in the motivation:

- pursuant to art. 58, par. 2, lett. f), of the Regulations, provides for the limitation of treatments in progress by prohibiting the School Office from any further dissemination of the tax codes of teachers included in the ranking "XX" and in the bulletins of transfers of school staff of the secondary school of the province of Livorno mentioned above;
- pursuant to art. 157 of the Code orders to communicate, within thirty days from the date of receipt of this provision, the initiatives undertaken to ensure the termination of the treatment. Failure to respond to a request is punished with an administrative sanction, pursuant to the combined provisions of Articles 83, par. 5, of the Regulation and 166 of the Code;

ORDER

to the Ministry of Education, University and Research, Regional School Office for Tuscany, Office VIII Territorial area of the province of Livorno, with registered office in Via Galilei 40, C.F. 80004140499, in the person of the pro-tempore legal representative, to pay the sum of € 3,000.00 (three thousand) as a pecuniary administrative sanction for the violations indicated in the motivation;

INJUNCES

to the same administration to pay the sum of € 3,000.00 (three thousand), in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, 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 in the manner indicated in the annex - of an amount equal to half of the sanction imposed, within the term referred to in art. 10, paragraph 3, of d. lgs. n. 150 of 1/9/2011 provided for the submission of the appeal as indicated below (Article 166, paragraph 8, of the Code).

HAS

pursuant to art. 166, paragraph 7, of the Code, the publication of this provision on the website of the Guarantor, considering that the conditions set out in art. 17 of the Guarantor Regulation n. 1/2019.

Pursuant to art. 78 of the Regulation, of art. 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, against this provision, it is possible to appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the applicant resides abroad.

Rome, April 21, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei