[doc. web no. 9831369]

Injunction order against the Municipality of Salento - 20 October 2022

Register of measures

no. 341 of 20 October 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, prof.ssa Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer. Guido Scorza, components and Dr. Claudio Filippi, deputy secretary general;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, concerning the protection of natural persons with regard to the processing of personal data, as well as the free movement of such data and which repeals Directive 95/46/ CE, “General Data Protection Regulation” (hereinafter, “Regulation”);

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national legal 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 the processing of personal data, as well as to the free movement of such data and which repeals Directive 95/46/EC (hereinafter the "Code");

CONSIDERING the Regulation n. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved with resolution no. 98 of 4 April 2019, published in the Official Gazette no. 106 of 8 May 2019 and in www.gpdp.it, doc. web no. 9107633 (hereinafter "Regulation of the Guarantor n. 1/2019");

Given the documentation in the deeds;

Given the observations made by the general secretary pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the Guarantor's office for the protection of personal data, doc. web no. 1098801;

Supervisor Prof. Geneva Cerrina Feroni;

WHEREAS

1. Introduction.

With a complaint of the XX, regularized and integrated with the XX, a citizen complained of an alleged violation of the regulations on the protection of personal data by the Municipality of Salento (hereinafter, the "Municipality").

In particular, it was represented that the Municipality, during the period of confinement to counter the spread of the SARS-CoV-2 virus, would have ascertained "the violation of the ban on leaving one's home" using a "video surveillance system [...] in the evening of the XX".

The complainant also complained that "the video monitored area [would not] be equipped with suitable billboards informing those concerned of the recovery".

Finally, the complainant represented that he had made a request to the Municipality, also on the basis of the provisions of art. 18 of the municipal regulation on video surveillance, to access the images taken "on the evening of the XX from h. 21.50 at h. 22.10" from the "cameras [...] positioned in Salento via M. Scarpa Valiante near the intersection between via Vignali and Via della Libertà", without, however, having obtained any response from the Municipality.

2. The preliminary investigation.

In response to the Authority's requests for information (see notes prot. no. XX of XX; XX of XX; XX of XX), the Municipality, with notes dated XX, XX (prot. no. XX) and XX (prot. n. XX), declared, in particular, that:

"the Municipality is equipped with regular billboards, moreover placed right in the place where the photograph was taken";

"assessing that the wording "unlimited in compliance with current legislation" contained in the extended information relating to the video surveillance system could generate some misunderstandings, albeit in perfect good faith, steps were taken to bring it into line with what is present in the regulation. For which the current reference is "the personal data being processed are kept for a period of time not exceeding that strictly necessary for the fulfillment of the institutional purposes of the system and in any case for a period of time not exceeding seven days, without prejudice to special needs for further conservation, in particular in relation to offenses that have occurred or to investigations by the judicial or public security authorities", as reported in the information on the home page of the institutional website [...]";

"with respect to the Data Processing Register, it should be noted that effectively during the month of XX (and precisely on the date XX) the designated DPO sent us a PEC note [...] accompanying the Data Controller Register, with all the information relating to the Municipality of Salento [...] [which was] received immediately, i.e. at the very moment it was sent. We did not formally receive it immediately as we were "distracted" by the well-known Covid problem which has really brought a small municipality like the ours, equipped with a few units as employees and having had to deal with all the emergency issues known to all. Today it is regularly implemented also from a formal point of view ";

the Municipality provided a reply to the claimant's request to exercise the rights "at the PEC of his lawyer dated XX prot.llo XX". The Municipality has provided the Authority, among other things, with a copy of a note from its Data Protection Officer, dated XX, which states that "for the purpose of facilitating the Organization in compliance with the obligations of the [Regulation] , [we proceeded] to generate, during the month of XX, a pdf version [...] of the treatment register".

With a note of the XX (prot. n. XX), the Office, on the basis of the elements acquired, the checks carried out and the facts that emerged following the preliminary investigation, notified the Municipality, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the provisions pursuant to art. 58, par. 2, of the Regulation, concerning the alleged violations of articles 5, par. 1, lit. a), b) and e), 6, 12, 13, 15 and 30 of the Regulation, inviting the aforementioned Municipality to produce defense writings or documents to the Guarantor 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 Law No. 689 of 24 November 1981).

With a note of the XX (prot. n. XX), the Municipality presented its defense brief, declaring, in particular, that:

"the whole affair arises from the need to guarantee by the [Mayor of the Municipality], also in his role as public health manager, compliance with the anti-Covid 19 legislation, also in compliance with the ordinance of the President of the [Campania] Region, particularly attentive in that period of the beginning of the pandemic, which recommended that We Mayors use all the means at our disposal to guarantee compliance with the same, precisely when the entire nation was subjected to total lockdown. The facts date back to the month of XX, a few weeks after the Government [...] had established, precisely, the total lockdown";

the Municipality, which has only "two [traffic policemen] in agreement with another Municipality for 15 hours a week, [...] used the only means available to try to enforce the aforementioned legislation";

"it is possible that the sign indicating that the area was subject to video surveillance, where the five citizens were [...,] was not in line with the legislation; but it was right on the head of the [complainant] clearly visible to remember that that area was under video surveillance";

"with reference to the publication on the [...] institutional website [of the Municipality] of the extended information [, in the documents of the Municipality there is a] communication of the XX [...] [of the] data protection officer, who [...] transmitted [to the Municipality] the link to be published where the information of the Municipality of Salento was available. In this regard, on [...] precise indications [from the Authority], once the inconsistency between the published information and what was reported in the Municipal Regulations was found, [the Municipality] proceeded to standardize the two texts";

“in reference to the refusal to exercise the right of access to the images free of charge, it should be emphasized that the amount requested was exactly what was budgeted by the technical company to carry out the extraction operations. The decision to request an expense contribution finds its legal basis in article 12 of the Regulation […]”;

"Furthermore, the [...] [municipal] regulation on video surveillance also provides for the possibility for the municipal council to determine the costs of making the images available".

During the hearing, requested pursuant to art. 166, paragraph 6, of the Code and held on the XX date (minutes prot. n. XX of the XX), the Municipality declared, in particular, that:

"the data controller is a very small municipality, with extremely limited resources, and the facts that are the subject of the complaint occurred in the difficult and critical context of the SARS-CoV-2 epidemiological emergency";

"the Municipality, in absolute good faith, in an attempt to contain the health emergency, which has caused deaths in the municipal area, and to stem the violation by some citizens of the provisions on the so-called lockdown, considering the small number of local police personnel at its disposal, deemed it appropriate to use video devices to ensure compliance with the law. The violations were, however, contested by the Municipality but the relative sums are destined for the Prefecture, as the Municipality therefore did not derive any economic benefit from them”;

"the interested parties were fully aware of being in an area subjected to video surveillance, given that the Municipality had affixed specific signs, which, although not perfectly in line with the legislation, were in any case suitable for accounting for the processing of personal data in place ”.

3. Outcome of the preliminary investigation.

On the basis of what emerged during the investigation, it is ascertained that, with report n.XX of the XX, the local police of the Municipality notified the complainant of the administrative violation of the provisions of Legislative Decree no. 19/2020, certifying that "in the year XX at 21.50 it is repeated at 22.10 [police operators have ascertained that] in Salento via M. Scarpa Valiante near the intersection between via Vignali and via Della Freedom" the complainant "has violated the measure to contain the contagion from Covid-19 referring to the limitation of the mobility of natural persons [...] [ex] art. 1, paragraph 1, of the D.P.C.M. 10 April 2020, specifically the person moved from the place of domicile, even in the absence of the conditions of work needs or health reasons or situations of necessity" and "has not complied with the ban on gatherings in a public place or place open to public - art. 1, paragraph 1, lett. d)".

In the report "it is specified that the fact was not disputed immediately after the violation [...] since it was a violation ascertained with a video surveillance system".

3.1 Transparency towards the interested parties.

In compliance with the principle of "lawfulness, correctness and transparency", the data controller must take appropriate measures to provide the interested party, before starting the treatment, with all the information required by the Regulation in a concise, transparent, intelligible and easily accessible form, with simple and clear language (articles 5, paragraph 1, letter a), 12 and 13 of the Regulation).

When video surveillance systems are used, the data controller, in addition to providing first level information by affixing warning signs near the area subjected to video surveillance, must also provide the interested parties with "second level information", which must "contain all the mandatory elements pursuant to Article 13 of the [Regulation]" and "be easily accessible for the interested party, for example through a complete information page made available in a central hub [...] or posted in a place of easy access" ("Guidelines 3/2019 on the processing of personal data through video devices" of the European Data Protection Board, adopted on 29 January 2020, in particular paragraph 7; but see already the "Provision on video surveillance" of the Guarantor of 8 April 2010, web doc. n. 1712680, in particular paragraph 3.1, as well as, lastly, the FAQ of the Guarantor n. 4 on video surveillance, doc. web no. 9496574; see, also, provisions of 28 April 2022, n. 162, doc. web no. 9777974, 7 April 2022, no. 119, doc. web no. 9773950, 16 September 2021, no. 327, doc. web no. 9705650 and 11 March 2021, n. 90, doc. web no. 9582791).

The first level information (warning sign) “should communicate the most important data, for example the purposes of the processing, the identity of the data controller and the existence of the rights of the data subject, together with information on the most significant impacts of the treatment” (Committee Guidelines, cit., par. 114). Furthermore, the signage must also contain information that could be unexpected for the data subject. This could be, for example, the transmission of data to third parties, especially if located outside the EU, and the retention period. If such information is not indicated, the interested party should be able to trust that there is only real-time surveillance (without any data recording or transmission to third parties) (Committee Guidelines, cit., par. 115). The first level warning signs must contain a clear reference to the second level of information, for example by indicating a website on which the text of the extended information can be consulted.

In the present case, although the Municipality has declared that it has posted an information sign near the area where the facts

object of the complaint took place, during the investigation - despite the specific requests formulated by the Office and the interlocutions on the point intervened with the Data Protection Officer of the Municipality - a fully legible version of this information sign has not been produced (only the name/logo of the Municipality, the video camera symbol and the wording "this area is subject to video surveillance" are legible)). Therefore, the Municipality has not demonstrated that it has provided adequate first-level information and complies with the requirements of the Regulation (see Article 13 of the same). In particular, the information sign does not refer to the purpose of the processing that was pursued on the occasion of the facts subject to the complaint, nor does it indicate the ways in which interested parties can consult complete information relating to the processing of video surveillance images.

As for this extended information, the Municipality has not proved in any way that the text of the same, sent to this Authority as an attachment to the note of the XX, was published on its institutional website or had in any case been brought to the attention of the interested parties already at the date of the facts object of the complaint. Moreover, the text produced during the investigation, in referring, as regards the purposes of the processing, "to the execution of tasks in the public interest for the protection and safety of individuals, including the profiles relating to urban security, the order and public safety, the prevention, detection or repression of crimes, the contract for access to public buildings", is, however, not suitable to represent to the interested parties the pursuit of purposes connected, as in the present case, to the assessment of administrative violations of the emergency legislation to contrast the spread of the SARS-CoV-2 virus.

The Municipality has therefore provided the interested parties with inadequate first level information and has failed to provide them with complete second level information, in a manner that does not comply with the principle of "lawfulness, correctness and transparency", in violation of the art. 5, par. 1, lit. a), 12 and 13 of the Regulation.

3.2 Purpose limitation and lawfulness of processing.

Public entities may, as a rule, process personal data using video devices if the processing is necessary for compliance with a legal obligation to which the data controller is subject or for the performance of a task in the public interest or connected with the exercise of public powers vested in the data controller (art. 6, paragraph 1, letters c) and e), and 3, of the Regulation, as well as 2-ter of the Code; see the "Guidelines 3/2019 on the processing of personal data through video devices", cit., par. 41; with specific regard to the use by Municipalities of video surveillance systems on public roads for urban security purposes, see art. 6, co. 7 and 8, of the legislative decree 23 February 2009, no. 11 and articles 4 and 5, co. 2, lit. a), of Legislative Decree 20

February 2017, no. 14).

The data controller is, in any case, required to respect the principles of data protection, including the principle of "purpose limitation", according to which personal data must be "collected for specified, explicit and legitimate purposes". , and subsequently processed in a way that is not incompatible with these purposes" (Article 5, paragraph 1, letter b), of the Regulation).

With regard to the purpose limitation principle, the art. 6, par. 4 of the Regulation specifies that "where the processing for a purpose other than that for which the personal data were collected is not based on the consent of the interested party or on a legislative act of the Union or of the Member States which constitutes a necessary measure and proportionate in a democratic society to safeguard the objectives set out in Article 23(1), in order to verify whether processing for another purpose is compatible with the purpose for which the personal data were initially collected, the the data controller takes into account, inter alia: a) any connection between the purposes for which the personal data were collected and the purposes of the envisaged further processing; b) the context in which the personal data were collected, in particular with regard to the relationship between the interested party and the data controller; c) the nature of the personal data […]; d) the possible consequences of the envisaged further processing for the data subjects; e) the existence of adequate guarantees, which may include encryption or pseudonymisation".

In the case subject to the complaint, the Municipality processed the images of its video surveillance system for a purpose (i.e. the contestation of an administrative violation of the emergency legislation regarding the containment of the spread of the SARS-CoV-2 virus), which cannot be considered compatible with that for which it was installed (i.e. the protection of public safety; see art. 3 of the municipal regulation on video surveillance, adopted with resolution no. 6 of 26 March 2018, in the file).

Apart from any consideration regarding the actual competence of the Municipality to ascertain an administrative violation in the context of the measures to contain the SARS-CoV-2 pandemic, as well as the suitability of a generic video surveillance system for the purposes of this assessment, also with regard to the identification of the transgressor, it is noted, in fact, that the processing of personal data put in place for the purpose of treatment connected to this assessment cannot in any case be considered logically connected or deriving from the treatments put in place by the Municipality for purposes of urban security, which are aimed at the "prevention and contrast of widespread and predatory crime phenomena", with respect to which, moreover, the sector legislation requires the prior stipulation of an agreement for the implementation of urban security between

the Mayor and the Prefect (see . art. 5, paragraph 2, letter a), of Legislative Decree 20 February 2017, no. 14) (see Working Group Art. 29, "Opinion 03/2013 on purpose limitation" (WP 203) of 2 April 2013, par. III.2.2.(a), where it is stated that there may be a relationship between the original purpose of processing and the further one in the event that the further processing is already to some extent implicit in the initial purpose, or can be considered a logical subsequent step in the light of this initial purpose).

The use of video surveillance on public roads as a measure to contain the SARS-CoV-2 pandemic is also in contrast with the expectations of citizens regarding the processing of their data, who, also in consideration of the provisions of municipal regulation on video surveillance adopted by the Municipality, trusted that the images acquired by cameras installed on the public road would be treated exclusively for the aforementioned urban security purposes (see "Opinion 03/2013 on purpose limitation", cit., par. II .3, where it is stated that further processing cannot be considered foreseeable if it is not sufficiently related to the original processing purpose and does not meet the reasonable expectations that the data subjects had at the time of data collection, taking into account the context in which such collection is occurred).

In addition, no specific guarantee for the interested parties has been adopted by the Municipality to reduce the impact on them and ensure the correctness of the treatment, since it has not provided the interested parties with any specific information regarding the further processing purpose pursued, relating to the assessment of administrative violations of the emergency legislation for the containment of SARS-CoV-2 (see "Opinion 03/2013 on purpose limitation", cit., par. III.2.2.(b)).

In the light of the foregoing considerations, the Municipality has processed the video surveillance images in question for a processing purpose incompatible with the original one, in a manner that does not comply with the principle of "limitation of purpose", in violation of art. 5, par. 1, lit. b) of the Regulation.

Bearing in mind that, only when the purpose of further processing is compatible with the original one, is no separate legal basis required other than that which allowed the collection of personal data (see cons. 50 of the Regulation) and considering that, in the case of specific, the Municipality has not, on the other hand, demonstrated the existence of autonomous conditions of lawfulness for the processing of video surveillance images, already acquired and processed for urban security purposes, also for the different purpose of ascertaining administrative violations in the context of the measures to contain the pandemic from SARS-CoV-2, the related processing of personal data was carried out in a manner that does not comply with the principle of "lawfulness, correctness and transparency" and in the absence of a legal basis, in violation of articles 5, par. 1, lit. a), and 6 of

the Regulation.

3.3 Limitation of Retention.

Pursuant to art. 5, par. 1, lit. e), of the Regulation, personal data must be “kept in a form that allows identification of data subjects for a period of time not exceeding the achievement of the purposes for which they are processed; personal data may be retained for longer periods provided that they are processed exclusively for archiving purposes in the public interest, scientific or historical research or statistical purposes, in accordance with Article 89(1), without prejudice to the implementation of technical measures and organizational requirements required by this regulation to protect the rights and freedoms of the data subject ("restriction of conservation")".

With regard to the processing of personal data carried out through video surveillance systems, the recorded images cannot be kept longer than necessary for the purposes for which they were acquired (Article 5, paragraph 1, letters c) and e) of the Regulation). Based on the principle of accountability (articles 5, paragraph 2, and 24 of the Regulation), it is up to the data controller to identify the conservation times of the images, taking into account the context and purposes of the processing, as well as the risk for rights and the freedoms of natural persons; this unless specific legal provisions expressly provide for certain data retention times (cf. art. 6, paragraph 8, of Legislative Decree 23 February 2009, n. 11).

Taking into account the aforementioned principle of "retention limitation", as well as that of "data minimization" (Article 5, paragraph 1, letter c) of the Regulation), "personal data should be - in most cases (e.g. if video surveillance is used to detect vandalism) – deleted after a few days, preferably through automatic mechanisms. The longer the retention period envisaged is (especially if it exceeds 72 hours), the more reasoned must be the analysis referring to the legitimacy of the purpose and the need for retention" (FAQ No. 5 of the Guarantor in matters of video surveillance, V 1.0 - December 2020, web doc. n. 9496574).

That said, with regard to the present case, it is noted that in the extended information on the processing of personal data (attached to note XX) it is stated that "personal data are kept for an unlimited time in compliance with current legislation".

In the face of this statement, the Municipality has not proved in any way, during the investigation, that it has set certain times for the conservation of the video surveillance images, as required in the light of the principle of "conservation limitation" (art. 5, paragraph 1, letter e), of the Regulation), for the purposes of ascertaining the administrative violations envisaged by the legislation on the SARS-CoV-2 emergency.

The processing of video surveillance images was, therefore, carried out by the Municipality, for the aforementioned administrative purposes, in a manner that did not comply with the principle of "retention limitation" (Article 5, paragraph 1, letter e), of the Regulation) .

3.4 The right to access personal data.

The art. 12 of the Regulation provides that the data controller must provide the data subject free of charge with information relating to the action taken regarding a request pursuant to articles 15 to 22 of the Regulation without unjustified delay and, in any case, at the latest within one month from receipt of the request itself (paragraphs 3 and 5).

Only "if the requests of the interested party are manifestly unfounded or excessive, in particular due to their repetitive nature, the data controller may charge a reasonable fee taking into account the administrative costs incurred to provide the information or communication or take the action request" (par. 5).

If he does not comply with the request of the interested party, the data controller must inform the interested party without delay, and at the latest within one month of receiving the request, of the reasons for the non-compliance and of the possibility of proposing a complaint to a supervisory authority and to propose a judicial appeal (par. 4).

With regard to the claimant's exercise of his rights, it should be noted that the latter had addressed to the Municipality, with a note dated XX, a request for "access [to] images [of] video surveillance pursuant to art. 18 [...] of the [Municipal Regulation on video surveillance]", adopted with "Municipal Council resolution no. 8/2018", according to which "to access the data and images, the interested party must present a specific written request [...] requesting the existence or otherwise of the processing of data that may concern him".

The municipal regulation also provides that, in the event that the "effective existence of the images" is ascertained, the day, time and place in which [the interested party] will be able to view the images will be "set [...] that concern him", specifying that he may be required to pay "an expense contribution [...] to cover the costs incurred for the completion of the procedure".

With note prot. n.XX of the XX, the Municipality, in response to the "PEC note dated XX", consequently communicated to the interested party that, in order to obtain a copy of the images extracted from the video surveillance system, he would have had to pay the "total sum of 307 euros .84”.

Subsequently, with note prot. no. XX of the XX, the Municipality set "the date for viewing the images [...] for the XX", inviting the interested party to send "a copy of the payment receipt [...] for the cost of the operation".

The Municipality has therefore denied the interested party the possibility of exercising the right of access to their personal data free of charge, expressly provided for by articles 12, par. 5, and 15 of the Regulation, having subordinated the same to the payment of the sum of 307.84 euros, although the request of the interested party could not be considered excessive, in violation of articles 12 and 15 of the Regulation.

3.5 The register of processing activities.

Pursuant to art. 30, par. 1, of the Regulation, "each data controller [...] [keeps] a register of the processing activities carried out under his own responsibility".

This obligation does not apply to companies or organizations with fewer than 250 employees, unless the processing they carry out could present a risk to the rights and freedoms of the interested party, the processing is not occasional or includes the processing of particular categories of data pursuant to art. 9, par. 1 of the Regulation or personal data relating to criminal convictions and crimes pursuant to art. 10 of the Regulation (art. 30, paragraph 5, of the Regulation).

Upon request, the data controller must make this register available to the supervisory authority (Article 30, paragraph 4, of the Regulation).

From the declarations in the documents it emerges that, at least until the month of XX, the Municipality, while processing personal data that may present a risk to the rights and freedoms of the interested parties (such as video surveillance on public roads), as well as non-occasional processing of personal data relating to particular categories or to criminal convictions and offences, has failed to draw up the register of processing activities, in violation of art. 30 of the Regulation.

4. Conclusions.

In the light of the assessments referred to above, it should be noted that the statements made by the data controller during the preliminary investigation □ the truthfulness of which may be called upon to answer pursuant to art. 168 of the Code □, although worthy of consideration, do not allow overcoming the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the closure of the present procedure, since none of the cases provided for by the 'art. 11 of the Regulation of the Guarantor n. 1/2019.

Therefore, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing of personal data carried out by the Municipality is noted, for having put in place an unlawful processing of personal data using video devices, in a non-transparent manner towards the interested parties, for failing to set the storage times for video surveillance images

processed for administrative purposes, for not allowing the interested party the right to free access to their personal data and for failing to draw up, at least until the month of XX, the register of treatment, in violation of the articles 5, par. 1, lit. a), b) and e), 6, 12, 13, 15 and 30 of the Regulation.

The violation of the aforementioned provisions makes the administrative sanction envisaged by art. 83, par. 5, of the Regulation, pursuant to articles 58, par. 2, lit. i), and 83, par. 3, of the same Regulation.

5. Corrective measures (Article 58, paragraph 2, letter c), of the Regulation).

The art. 58, par. 2, lit. c), of the Regulation provides that the Guarantor has the corrective powers to "order the data controller or the data processor to satisfy the requests of the interested party to exercise their rights deriving from the [...] regulation".

Taking note of what emerged during the preliminary investigation and taking into account the fact that the Municipality has neither demonstrated that it has provided the data subject free of charge with a copy of the personal data object of the request for access, nor has it presented reasons in fact or in law impeding the acceptance of the same, it is necessary, pursuant to articles 12, par.1 and 3, 15, par. 1 and 3, and 58, par. 2, lit. c), of the Regulation, order the Municipality, if it has not already done so, to provide the interested party free of charge, within thirty days of notification of this provision, a copy of the video surveillance images requested, also providing the Guarantor, within the same term, pursuant to articles 58, par. 1, lit. a), of the Regulation and 157 of the Code, an adequately documented response regarding the initiatives undertaken in order to implement what was ordered, or, alternatively, within the same term, pursuant to articles 12, par. 1 and 3, 15, 58, para. 1, lit. a), of the Regulation and 157 of the Code, to inform the Authority and the complainant, regarding the possible existence of reasons in fact or in law impeding the possibility of accepting said request, providing an adequately documented response.

It remains understood that it is up to the Municipality, as data controller, to verify the existence of the conditions established by law for the purposes of any acceptance (see, in particular, articles 12, paragraph 6, and 15, paragraph 4, of the Regulation and 2-undecies of the Code, also with regard to the need to previously obscure any images referable to third parties).

In the event that, on the other hand, the Municipality has already provided a reply to the aforementioned request of the interested party, it is necessary to enjoin the Municipality, pursuant to articles 58, par. 1, lit. a), of the Regulation and 157 of the Code, to inform the Authority of this circumstance, providing, within the same term indicated above, an adequately documented response.

Lastly, with regard to the disputed failure to draft the register of processing activities, it is noted that, with note prot. no. XX of

the XX, the Municipality declared that it had fulfilled the obligation in question.

6. Adoption of the injunction order for the application of the pecuniary administrative sanction and accessory sanctions (articles 58, paragraph 2, letter i and 83 of the Regulation; article 166, paragraph 7, of the Code).

The Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation as well as art. 166 of the Code, has the power to "impose 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, according to the circumstances of each single case" and, in this context, "the College [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in whole or in part, on the website of the Guarantor pursuant to article 166, paragraph 7, of the Code" (art. 16, paragraph 1, of the Guarantor's Regulation no. 1/2019).

In this regard, taking into account the art. 83, par. 3 of the Regulation, in the specific case the violation of the aforementioned provisions is subject to the application of the administrative fine provided for by art. 83, par. 5, of the Regulation.

The aforementioned pecuniary administrative sanction imposed, depending on the circumstances of each individual case, must be determined in the amount taking into due account the elements provided for by art. 83, par. 2, of the Regulation.

In relation to the aforementioned elements, the particular nature and seriousness of the violation was considered, which took the form of an invasive and disproportionate form of surveillance of citizens, moreover in a particularly delicate context, in which they were subject to restrictions of an exceptional nature as a result of the measures to combat the SARS-CoV-2 pandemic. Forms of opaque surveillance of public spaces, which have unexpected consequences on the juridical sphere of the interested parties, can, in fact, seriously compromise the exercise of fundamental freedoms of individuals, curb the right to self-determination and discourage participation in the public arena, up to to the point of "modifying the cultural norms" on which democratic societies are based, with the consequence of "admitting the absence of privacy as a rule" ("Guidelines 3/2019 on the processing of personal data through video devices", cit. , paragraph 5). Nor can the state of emergency due to the pandemic be invoked in this regard, given that, as highlighted by the European Data Protection Board, "even in these exceptional moments, data controllers and processors must guarantee the protection of the personal data of concerned" and that although "emergency [is] a legal condition which may legitimize limitations of freedoms [this can only happen] on condition that such limitations are proportionate [...]" ("Statement on the processing of personal data in the context of the epidemic from COVID-19" adopted on 19 March 2020).

The lack of collaboration offered by the data controller during the investigation was also considered, since he provided the information elements requested by the Authority late, only following requests from the Office, sometimes incompletely and evasive, even producing poorly legible documentation (see copies of information signs on video surveillance).

On the other hand, the fact that the data controller is a modest-sized body (with less than five thousand inhabitants) was taken into consideration. Furthermore, there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction in the amount of 12,000 (twelve thousand) euros for the violation of articles 5, par. 1, lit. a), b) and e), 6, 12, 13, 15 and 30 of the Regulation, as a pecuniary administrative sanction withheld, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account that the video surveillance activity in question involved public places, realizing a processing of personal data that "allows [to detect] the presence and behavior of people in the space in question" ("Guidelines 3/2019 on data processing personal data through video devices", par. 2.1, cit.), without the subjects taken up being aware of the effective purpose of the treatment pursued, with consequent prejudice to their rights and fundamental freedoms, it is also believed that the accessory sanction should be applied the publication on the Guarantor's website of this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Regulation of the Guarantor n. 1/2019.

Finally, it should be noted that the conditions pursuant to art. 17 of Regulation no. 1/2019.

ALL THIS CONSIDERING THE GUARANTOR

declares, pursuant to art. 57, par. 1, lit. f), of the Regulation, the illegality of the treatment carried out by the Municipality of Salento for violation of the articles 5, par. 1, lit. a), b) and e), 6, 12, 13, 15 and 30 of the Regulation, in the terms indicated in the justification;

ORDER

pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, as well as art. 166 of the Code, to the Municipality of Salento, with registered office in Piazza Europa, 2 - 84070 Salento (SA), Tax Code 84000050652, to pay the sum of 12,000 (twelve thousand) euros as an administrative fine for the violations indicated in the justification. 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 fine imposed;

ENJOYS

to the aforementioned municipality:

a) in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of 12,000 (twelve thousand) euros according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law no. 689/1981;

b) pursuant to articles 12, par. 1 and 3, 15, par. 1 and 3, and 58, par. 2, lit. c), of the Regulation, to provide the interested party free of charge, if he has not already done so, after verifying the existence of the conditions established by law, within thirty days of notification of this provision, a copy of the video surveillance images requested, providing, also, to the Guarantor, within the same term, pursuant to articles 58, par. 1, lit. a), of the Regulation and 157 of the Code, an adequately documented response regarding the initiatives undertaken in order to implement the order;

c) alternatively, within the same term referred to in the previous lett. b), pursuant to articles 12, par. 3, 15, 58, para. 1, lit. a), of the Regulation and 157 of the Code, to inform the Authority and the complainant, providing an adequately documented response, regarding the possible existence of reasons in fact or in law impeding the possibility of accepting the request of the interested party to obtain copy of the aforementioned personal data;

d) alternatively, pursuant to articles 58, par. 1, lit. a), of the Regulation and 157 of the Code, in the event that the Municipality has already provided feedback to the aforementioned request of the interested party, to inform the Authority of this circumstance, providing, within the same term indicated above, an adequate response documented.

HAS

the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code (see art. 16 of the Guarantor's Regulation no. 1/2019);

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lit. u), of the Regulation, of the violations and of the measures adopted in accordance with art. 58, par. 2, of the Regulation (see art. 17 of the Guarantor Regulation n. 1/2019).

Pursuant to articles 78 of the Regulation, 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision it is possible to lodge an 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 appellant resides abroad.

Rome, 20 October 2022

PRESIDENT

Station

THE SPEAKER

Cerrina Feroni

THE DEPUTY SECRETARY GENERAL

Philippi