

Injunction against R.T.I. - Italian television networks s.p.a. - February 6, 2020

Register of measures

no. 28 of 6 February 2020

GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, in the presence of Dr. Antonello Soro, president, of dott.ssa Augusta Iannini, vice president, of prof.ssa Licia Califano and of dott.ssa Giovanna Bianchi Clerici, members and of dott. Giuseppe Busia, general secretary;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter, the "Regulation");

HAVING REGARD TO the Code regarding the protection of personal data, containing provisions for the adaptation of the national legal system to Regulation (EU) 2016/679 (legislative decree 30 June 2003, n. 196, as amended by legislative decree 10 August 2018, n. 101, hereinafter "Code");

HAVING REGARD to the complaint presented to the Guarantor on 30 October 2018, pursuant to art. 77 of the Regulation, with which Ms XX, represented and defended by Avv. XX complained of a violation of the regulations on the protection of personal data in relation to the transmission, during the episode of "Le Iene" of XX 2018, of a service entitled "XX" in which the complainant would have been made identifiable through the use of your voice and other information relating to your personal sphere;

CONSIDERING that the interested party has, in particular, represented that:

in the service a woman with a darkened face is interviewed, presumably an actress, to whom her voice and personal information that she had confided to a client is associated;

- the set of information treated in the interview (the city of origin, the fact of having recently moved house and having children, the previous profession carried out, the place and the period of a vacation that he would have undertaken shortly thereafter , of having taken his children skiing shortly before, specifying the region, and the habit of going on holiday every year to a place, also specified) together with the fraudulent theft of the voice have allowed many to recognize it;
- the unauthorized disclosure of your personal data took place «with an evident artifice/deception» by a subject, who did not present himself as a journalist or correspondent of Le Iene, XX;

- your request for removal of the video, also accessible online, addressed to Mediaset S.p.a. remained unanswered and therefore asks the Guarantor, pursuant to art. 17 of the Regulation, to order the aforementioned Company to cancel the service in question and to order a sanction against the latter;

HAVING REGARD TO the note from RTI- Reti Televisive Italiane s.p.a. of 4 February 2019 in which he specifies that:

- the failure to reply to the letter from the claimant's lawyer «is attributable exclusively to a lack of knowledge, probably deriving from an original defect, or from its forwarding not to the undersigned company, but to the headquarters of the parent company» and which, if informed «would have immediately accepted the removal request»;
- the service has been canceled and is no longer available online;
- the service had been packaged through the replacement of the image portraying the complainant, also duly obscured, "in the belief that this masking method would guarantee anonymity and not allow identification of the interested party";

GIVEN the reply note of the complainant dated 16 September 2019 in which she reiterates her position, highlighting that the television service was also taken up by other newspapers and asking the Guarantor to impose a fine on RTI - Reti Televisive Italiane s.p.a as well as to establish compensation for the damage suffered;

GIVEN the note of the Office of 18 October 2019 (prot. n. 34799) with which, pursuant to art. 166, paragraph 5, of the Code, was communicated to RTI- Reti Televisive Italiane s.p.a. the initiation of the procedure for the possible adoption of the provisions pursuant to art. 58, par. 2, of the Regulation and notified the alleged violations of the law, identified, in the specific case, in the violation of art. 5, par. 1 lit. a), of the Regulation and of the articles 2 quater, paragraph 4, 137 and 139 of the Code and articles 2, 5, 6, 8 and 11 of the Deontological rules relating to the processing of personal data in the exercise of journalistic activity (resolution of the Guarantor n. 491 of 29 November 2018 - published in the Official Journal of 4 January 2019, n. 3, hereinafter "Ethical rules");

HAVING REGARD to the note of November 18, 2019 with which RTI- Reti Televisive Italiane s.p.a., in recalling the previous response of April 8, responded to the aforementioned note from the Office, recalling the arguments set out in the note of February 4, 2019;

CONSIDERING that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the

Guarantor";

NOTING that in the television service subject of the complaint - aimed at accounting for the choice of some Italian women to carry out the profession of prostitute, outside Italy, in Switzerland, also due to the huge earnings deriving from this - images relating to one of these women taken without clothes, with only her face obscured, in the company of an alleged customer and the voice of the complainant and other information relating to her personal and family sphere have been associated with her (the city of origin, the circumstance of having recently changed home and that he has children, his previous profession, the place and period of a holiday he would soon undertake, that he had taken his children skiing shortly before, specifying the region, and the habit of go on holiday every year to a place, also specified);

NOTING also that the acquisition of such information took place from a person who, posing as a customer, concealed the purposes of the collection and the methods of subsequent use;

CONSIDERING that such conduct constitutes a violation of the general principles of lawfulness and correctness of the processing of personal data pursuant to art. 5, par. 1 lit. a) of the Regulations, as well as the specific provisions governing journalistic activity with reference to:

a) the collection of data from the complainant, in the light of art. 2 of the Deontological Rules which establishes that "the journalist who collects news ... discloses his identity, his profession and the purposes of the collection unless this entails risks for his safety or otherwise makes it impossible to exercise the information function ; avoid artifice and undue pressure»);

b) their dissemination, in the light of the articles:

- 137, paragraph 1 of the Code, which prescribes that the particular data pursuant to art. 9 of the Regulation (including data relating to the sexual sphere and sexual habits), can be processed even without the consent of the interested party, provided that they comply with the ethical rules;

- 5, 6, 8 of the Deontological Rules which prescribe that the processing of data for journalistic purposes takes place according to the parameters of the "essential nature of information regarding facts of public interest" and with respect for the dignity of the person;

- 11 of the Deontological Rules which expressly states that «the journalist abstains from describing sexual habits referring to a particular person, identified or identifiable»;

NOTING that R.T.I. - Italian television networks s.p.a. declared that it had removed the video in question, for which it is

believed that there are no grounds for the Authority to adopt measures in this regard;

CONSIDERING that a violation of the provisions concerning the exercise of the rights pursuant to articles from 15 to 22 of the Regulation, given that the preliminary questioning of the complainant has been sent to a subject other than the data controller, as is regularly indicated in the information on the "Le lene" website;

CONSIDERING, in relation to the claimant's request for compensation for damages, that this Authority is not competent in relation to requests for compensation; where the conditions are met, however, the right of the interested person who believes to have suffered damage - even non-pecuniary - as a result of the processing of personal data, to assert their claims for compensation before the ordinary judicial authority remains unchanged (art. 152 of the Code);

DETECTED, however, the unlawfulness of the processing carried out by R.T.I. s.p.a., for violation of the aforementioned Rules of Conduct, the observance of which constitutes an essential condition for the lawfulness and correctness of the processing of personal data (Article 2 – quater of the Code);

CONSIDERING that failure to comply with the provisions contained in the ethical rules is sanctioned pursuant to the combined provisions of Articles 2-quater, 166, paragraph 2, of the Code, and 83, par. 5, of the Regulation;

CONSIDERING the art. 83, par. 3, of the Regulation, pursuant to which if in relation to the same treatment or related treatments, a data controller or processor violates, with malice or negligence, various provisions of the Regulation, the amount of the pecuniary administrative sanction does not exceed the amount applicable for the most serious violation;

NOTING that 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 corrective 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, depending on the circumstances of each individual case" and, in this context, "the Board [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in full 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);

CONSIDERED, due to the violations found, to have to dispose of RTI - Reti Televisive Italiane s.p.a., pursuant to art. 58, paragraph 2, lett. i) of the Regulation, the pecuniary administrative sanction pursuant to art. 83, par. 5, of the Regulation, and that the relative amount must be concretely determined on the basis of the elements indicated in art. 83, par. 2, of the Regulation in consideration, on the one hand:

a) the seriousness of the violation, taking into account the particular nature of the data processed in the specific case, relating to the sexual sphere of the interested party, and the general context of the journalistic service (of particular negative impact, due to the contents and images, on the dignity and confidentiality of the complainant and her family members), in which the identifiability of the interested party effectively nullifies her choice to keep the activity exercised in another country separate from the dimension of life carried out in Italy (art. 83, par. 2, letters a) and g) of the Regulation); the circumstance, moreover, that the information collected through the video in question - also disseminated on the net and not only during the television broadcast - was recorded without the complainant having been informed of the collection for journalistic purposes;

b) the fact that no measures have been taken to adequately guarantee the anonymity of the data subject, such as the alteration of the voice and the omission of some specific personal references (e.g. places and vacation periods) which would not have however jeopardized the completeness of the information;

c) the absence of the conditions (risks for safety and impossibility of otherwise exercising the information function, art. 2 Deontological rules) which prevent the journalist from disclosing his identity, the profession carried out, as well as the purposes pursued with the collection of personal information, considering that in this case the aim was to document the economic and social reasons for particular life choices;

d) the duration of the violation which lasted for an extended period of time, from the diffusion of the video also on the net up to the start of the preliminary investigation;

e) the relevant conditions on the organisational, economic and professional level of the offender;

and, on the other:

f) the purposes pursued by the owner, attributable to the exercise of the right to report and freedom of information and, therefore, the need to ensure in this context the relative balance with the fundamental right of the complainant to the protection of personal data concerning him, according to the provisions of the Regulation (art. 85) and the Code (art. 136 et seq.);

g) the adoption of suitable measures to eliminate the consequences of the violation (article 83, paragraph 2, letter c, of the Regulation), since the owner has already removed the video object of the complaint during the preliminary investigation phase;

CONSIDERING the above parameters and the principles of effectiveness, proportionality and dissuasiveness indicated in art. 83, par. 1, of the Regulation;

CONSIDERING that, on the basis of all the elements indicated above, the pecuniary administrative sanction of 20,000.00

(twenty thousand) euros should be applied;

CONSIDERED also - also in consideration of the invasiveness of the disputed processing with respect to the fundamental rights of the data subject, the type of personal data being processed and the methods of collection of the same information, as well as the time span that elapsed from the moment the video was broadcast up to the relative removal - which, pursuant to articles 166, paragraph 7, of the Code, and 16, paragraph 1, of the Guarantor's Regulation n. 1/2019, it is necessary to proceed with the publication of this provision on the website of the Guarantor, by way of ancillary sanction;

CONSIDERING that the conditions referred to in art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor;

HAVING REGARD to the documentation in the deeds;

HAVING REGARD TO the observations made by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER Prof. Licia Califano;

ALL THIS CONSIDERED

declares the unlawfulness of the processing of personal data carried out by R.T.I. - Italian television networks s.p.a. in the terms referred to in the introduction and, pursuant to art. 57, par. 1 lit. f), of the Regulations, takes note of what was communicated by the same RTI - Reti Televisive Italiane s.p.a. regarding the successful removal of the video object of the complaint;

ORDER

pursuant to articles 58, paragraph 2 lett. i) and 83 of the Regulation to RTI - Reti Televisive Italiane s.p.a. to pay the sum of 20,000.00 (twenty thousand) euros as an administrative fine for the violations indicated in the justification, representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute, by paying, within the term of thirty days, an amount equal to half of the fine imposed;

ENJOYS

Arts. - Reti Televisive Italiane s.p.a., in the event of failure to settle the dispute pursuant to the aforementioned art. 166, paragraph 8, of the Code, to pay the sum of 20,000.00 (twenty 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 deeds pursuant

to art. . 27 of the law n. 689/1981.

HAS

pursuant to art. 166, paragraph 7, of the Code, the entire publication of this provision on the website of the Guarantor and believes that the conditions set forth in art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

Pursuant to art. 78 of the Regulation, as well as the articles 152 of the Code and 10 of Legislative Decree lg. 1 September 2011, no. 150, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal filed, alternatively, with the court of the place where the data controller resides or has its registered office or with the court of the place of residence of the interested party within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 6 February 2020

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia