

Injunction against Municipality of Catania - 31 January 2019

Register of measures

no. 23 of 31 January 2019

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

CONSIDERING the art. 1, paragraph 2, of the law of 24 November 1981, n. 689, pursuant to which the laws that provide for administrative sanctions are applied only in the cases and for the times considered in them;

NOTING that, following a report received by this Authority on 6 October 2016 which complained about the publication on the institutional website of the Municipality of Catania of the ranking of subjects admitted and excluded from the rent contribution for the year 2015 (with the indication of the name, date and place of birth, tax code, residence address of the interested parties and the reasons for exclusion from the benefit), the Office launched an investigation against the Municipality of Catania, to verify the compliance of the treatments carried out with respect to the regulations set out in the Code regarding the protection of personal data (Legislative Decree no. 196 of 30 June 2003, hereinafter the "Code");

HAVING ACKNOWLEDGED the note prot. no. 15873/111861 of 24 May 2018, with which the Office concluded the investigation, ascertaining that on the institutional website of the Municipality of Catania, in addition to the ranking object of the report, also the rankings containing data and personal information of the subjects admitted and excluded from the allocation of the "rent contribution to supplement the rent" relating to the years 2010, 2011 and 2015, as well as the rankings for the assignment of housing for evicted persons and in situations of economic and social hardship with indication of the name of the interested parties; in the rankings relating to the evicted subjects, moreover, in some cases, in addition to the names of the interested parties, the condition of 100% invalidity was also reported. It was, therefore, ascertained that the publication of the personal data and information mentioned above had caused a dissemination of personal data that did not comply with the relevant regulations on the protection of personal data, as it occurred in the absence of a provision of law or of regulation, in violation of art. 19, paragraph 3, of the Code and in contrast with the prohibition of disseminating data suitable for revealing the state of health pursuant to art. 22, paragraph 8, of the Code;

CONSIDERING, moreover, that from the aforesaid investigation it appears that the behavior of the Municipality of Catania is in contrast with the provisions of art. 26, paragraph 4, of Legislative Decree 14 March 2013 n. 33, which excludes the publication of identification data of natural persons receiving economic contributions, if from such data it is possible to obtain information relating to the state of health or the situation of economic and social hardship of the interested parties;

CONSIDERING the report prot. no. 21501/111861 of 18 July 2018 with which the Municipality of Catania, based in Catania, Piazza Duomo, P.I. 00137020871, in the person of the pro tempore legal representative, the administrative violation envisaged by art. 162, paragraph 2-bis, of the Code in relation to articles 19, paragraph 3, and 22, paragraph 8, of the same Code, informing the party to make the payment in a reduced amount pursuant to art. 16 of the law of 24 November 1981, n. 689; NOTING that from the report prepared by the Office pursuant to art. 17 of the law of 24 November 1981 n. 689, the reduced payment has not been made;

NOTING that the offender does not appear to have made use of the faculties provided for by art. 18 of the law of 24 November 1981 n. 689 (by not sending the Authority written defenses and documents or asking to be heard);

NOTING, therefore, that the unlawful conduct put in place by the Municipality of Catania, consisting in the dissemination of personal data contained in the rankings relating to the assignment of "rent contributions to supplement the rent" and in the rankings for the assignment of lodgings for evicted individuals in conditions of economic and social hardship, is sanctioned by art. 162, paragraph 2-bis, of the Code and with reference to the dissemination of personal data in the absence of suitable regulatory conditions pursuant to art. 19, paragraph 3, both with reference to the prohibition of dissemination of data suitable for revealing the state of health pursuant to art. 22, paragraph 8, of the Code;

CONSIDERING the art. 162, paragraph 2-bis, of the Code which punishes the violation of the provisions indicated in art. 167 of the same Code, including the articles 19 and 22, paragraph 8, with the administrative sanction of payment of a sum from ten thousand euros to one hundred and twenty thousand euros;

HAVING REGARD to the law of 24 November 1981 n. 689, and subsequent modifications and additions;

CONSIDERING that, for the purposes of determining the amount of the pecuniary sanction, it is necessary to take into account, pursuant to art. 11 of the law of 24 November 1981 n. 689, of the work carried out by the agent to eliminate or mitigate the consequences of the violation, the seriousness of the violation, the personality and economic conditions of the offender;

HAVING ACKNOWLEDGED that the Municipality of Catania has availed itself of the facilitated definition of the pecuniary administrative sanction referred to in report no. 21501/111861 of 18 July 2018, pursuant to art. 18 of Legislative Decree 10 August 2018 n. 101 containing "Provisions for the adaptation of national legislation to the provisions of 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 repealing Directive 95/46/EC (general regulation on data protection) (GU General Series no. 205 of 04-09-2018)";

TAKING ACCOUNT of the fact that the Municipality of Catania erroneously believed it could avail itself of the faculty of facilitated definition of violations regarding the protection of personal data referred to in the aforementioned art. 18 of Legislative Decree 10 August 2018 n. 101, given that the aforementioned article, in paragraph 1, provides that only the sanctioning procedures initiated, with the adoption of the notification of dispute, on a date prior to 25 May 2018 can be subject to facilitated definition. In the present case, the violation was ascertained with a complaint report dated 18 July 2018, therefore after that of application of the General Data Protection Regulation "EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 relating to the protection of natural persons with regard to the processing of personal data, as well as the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation)" (May 25, 2018);

CONSIDERING therefore that the amount of the fine quantified at 10,000.00 (ten thousand) euros must be reduced by the amount of 4,000.00 (four thousand) euros paid by the Municipality and that therefore the amount of the pecuniary sanction must be quantified in the amount of 6,000.00 (six thousand);

CONSIDERED, therefore, of having to determine, pursuant to art. 11 of the law n. 689/1981, the amount of the pecuniary sanction, based on the aforementioned elements evaluated as a whole, in the minimum amount of 6,000.00 (six thousand) euros for the violation of articles 19, paragraph 3, and 22, paragraph 8, of the Code (art. 162, paragraph 2-bis of the same Code);

HAVING REGARD to the documentation in the deeds;

HAVING REGARD TO the observations of the Office, formulated by the Secretary General pursuant to art. 15 of the Guarantor's regulation n. 1/2000, adopted with resolution of 28 June 2000;

SPEAKER Prof. Licia Califano;

ORDER

to the Municipality of Catania, with headquarters in Catania, Piazza Duomo, P.I. 00137020871, in the person of the pro-tempore legal representative, to pay the sum of 6,000.00 (six thousand) euros as a pecuniary administrative fine provided for by art. 162, paragraph 2-bis, of the Code, as indicated in the justification, for having unlawfully disseminated personal data;
ENJOYS

to the same to pay the sum of Euro 6,000.00 (six 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 law of 24 November 1981, n. 689.

Pursuant to articles 152 of the Code and 10 of Legislative Decree lg. no. 150/2011, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal lodged with the ordinary court of the place where the data controller has his residence, within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 31 January 2019

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia