

Injunction order against the Metropolitan City of Naples - 29 October 2020

Register of measures

no. 204 of 29 October 2020

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 repealing 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 natural persons 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 law n. 689/1981 and subsequent amendments and additions, with particular reference to art. 1, paragraph 2;

HAVING REGARD TO the complaint presented on the XX date by Mr. XX, an employee of the Metropolitan City of Naples, with whom he complained that a note containing a report, from which a disciplinary proceeding against him would have originated, would have been registered "without the attributes of confidentiality, so as to be available to a plurality of subjects" and that due to the wide circulation that the document would have had within the administration, the same would have subsequently been the object of exchange, through e-mail messages and social networks, among the staff of the Office. In particular, the complainant represented that he had become aware of the fact that the report proposed against him by a manager of the Metropolitan City would have "been inserted in the IT portal of the Metropolitan City of Naples, called "Folium", without the confidentiality attributes , so as to be available to a plurality of subjects [... and have] a wide echo among their colleagues and was transmitted, both via e-mail and via whatsapp to various people".

HAVING REGARD to the request for information (prot. note n. XX of XX) from the Public Realities Department of this Authority,

with which the Metropolitan City was invited to provide any element and useful information in relation to what was reported;
HAVING ACKNOWLEDGED the note dated XX (prot. n. XX), with which the Data Protection Officer of the Metropolitan City provided feedback, on behalf of the latter, in relation to what was requested, declaring, in particular, that:

- the Entity's documents are managed by the "IT document management system" (hereinafter, SIGID), access to which "is allowed only through an authentication process that requires the prior entry into the system of specific access credentials" ;
- access to the System is not permitted to unauthorized users without authentication credentials and does not allow for operations not envisaged by the associated profile to be carried out;
- with reference to the present case, the report of XX, is "considered as useful information for the activation of a disciplinary procedure against the employee XX, but not [...] technically qualifying as the initiation of a disciplinary procedure".

HAVING REGARD to note no. XX of the XX of the Public Realities Department, with which the procedure was defined, the reasons for which must be understood as integrally referred to here, with particular reference to the fact that "in the context of the processing of personal data carried out through computerized document management systems, it is necessary, adopt differentiated and/or confidential procedures with regard, for example, to all documents relating to employee disciplinary proceedings, as well as the preliminary acts to activate them, due to the delicate information that may be contained in these documents (on the point , see also some decisions with which the Guarantor declared the illicit processing of employees' personal data by colleagues due to the incorrect configuration of the IT protocol, Prov. ti 11 October 2012, n. 280, web doc. n. 2097560 and 12 June 2014, n. 298, web doc. n. 3318492)";

CONSIDERING that in the cited deed the Department ascertained that the failure to evaluate the specific content of the note which initiated the disciplinary procedure (containing the notification against the complainant) and the consequent filing of the same note without the confidentiality attributes made the document to a plurality of employees not authorized for specific processing; this as a consequence of the fact that the Entity erroneously qualified this note as mere "news useful for the activation of a disciplinary procedure against the employee" but not technically as an act of "initiation of a disciplinary procedure";

CONSIDERING that, therefore, in the aforesaid note, the Public Realities Department ascertained that, "albeit for reasons attributable to a possible error of assessment in the context of the ordinary logging procedures, an unlawful processing of the complainant's personal data has occurred (art. 19 of the Code)", since, "as a result of the failure to register the deed in a

"confidential" form, the conditions were established which made it possible to consult a document containing particularly sensitive information relating to [the complainant], a group of unauthorized subjects";

CONSIDERING that the facts that are the subject of the complaint occurred in November of the twentieth (see extract of the twentieth of the protocol system attached to the complaint), therefore, on a date prior to that on which Regulation (EU) 2016/679 became applicable (May 25, 2018) and that, therefore, the Personal Data Protection Code applies to the processing of personal data in question in the version prior to the reformulation of the same made by means of Legislative Decree no. 101/2018;

CONSIDERING the act of the XX (prot. n. XX) with which the Public Realities Department of the Guarantor contested the Metropolitan City of Naples, in the person of the pro-tempore legal representative, with registered office in Piazza Matteotti, n. 1, Naples, VAT number 01263370635, the violation of the provision referred to in article 19 of the Code, sanctioned by article 162, paragraph 2-bis of the same Code, for having communicated personal data relating to the complainant to unauthorized subjects in the absence a suitable regulatory prerequisite;

NOTING that from the administrative report prepared by the Office, pursuant to art. 17 of the law of 24 November 1981 n. 689, the reduced payment pursuant to art. 16 of law 689/81;

NOTING that the Metropolitan City of Naples has not availed itself of the right to present a defense brief pursuant to art. 16 of the law of 24 November 1981 n. 689;

NOTING that, on the basis of the reasons referred to in the administrative dispute of the XX, which are understood to be referred to in full and confirmed herein, the Metropolitan City of Naples, in the person of its pro-tempore legal representative, as data controller, appears to have committed the violation of the provision pursuant to art. 19 of the Code, sanctioned by art. 162, paragraph 2-bis, of the same Code, for having communicated personal data relating to the complainant to unauthorized subjects in the absence of a suitable regulatory prerequisite, as specified above;

CONSIDERING the art. 162, paragraph 2-bis of the Code, which punishes the violations indicated in art. 167, including the violation relating to art. 19 of the same Code, with the administrative sanction of payment of a sum from Euro 10,000.00 (ten thousand) to Euro 120,000.00 (one hundred and twenty thousand);

CONSIDERING that, for the present case, the reduction provided for by art. 164-bis, paragraph 1, of the Code, since the failure to register the report against the employee as a "confidential" document, on the basis of which the disciplinary

procedure was initiated, was the result of the erroneous consideration of the same as a mere "document useful for the activation of the disciplinary procedure" but not as a document of the procedure (for whose documents, as proven by the institution, the "confidential" protocol is envisaged, which allows selective access only to authorized personnel of the relative treatment);

CONSIDERING, therefore, that the sanction provided for by the aforementioned art. 162, paragraph 2-bis, of the Code, restated pursuant to the aforementioned art. 164-bis, paragraph 1, of the same Code, varies from a minimum of Euro 4,000.00 to a maximum of Euro 48,000.00;

CONSIDERING that with the aforementioned administrative dispute of the XX the Guarantor informed the Metropolitan City of Naples of the possibility of making use of the right to make the payment, within the peremptory term of 60 days from the date of notification of the dispute, of the sum established at 8,000 (eight thousand) EUR;

CONSIDERING that the Metropolitan City of Naples has not made use of this option;

CONSIDERING that, for the purpose 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 and that therefore the amount of the pecuniary sanction must be quantified in the amount of 8,000.00 euros (eight thousand);

HAVING REGARD to the documentation in the deeds;

GIVEN the observations made by the deputy secretary general pursuant to art. 15 of the Guarantor's regulation n. 1/2000, adopted with resolution of 28 June 2000;

SPEAKER Prof. Geneva Cerrina Feroni;

ORDER

to the Metropolitan City of Naples, in the person of the pro-tempore legal representative, with registered office in Piazza Matteotti, n. 1, Naples, VAT number 01263370635, to pay the sum of 8,000.00 (eight thousand) euros as an administrative fine for the violation of the provision pursuant to art. 19 of the same Code for having communicated personal data to unauthorized third parties without a suitable legal basis;

ENJOYS

to the same Municipality to pay the sum of 8,000.00 (eight 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 of 24 November 1981, n. 689.

Pursuant to articles 152 of the Code and 10 of Legislative Decree 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, 29 October 2020

PRESIDENT

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THE SPEAKER

Cerrina Feroni

THE DEPUTY SECRETARY GENERAL

Philippi