[doc. web n. 9777974]

Injunction order against the Municipality of Taranto - April 28, 2022 *

Record of measures

n. 162 of 28 April 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by 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 the "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196, "Code regarding the protection of personal data", as amended by Legislative Decree 10 August 2018, n. 101, containing provisions for the adaptation of national law to the Regulation (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 April 2019, published in the Official Gazette n. 106 of 8 May 2019 and in www.gpdp.it, doc. web n. 9107633 (hereinafter "Regulation of the Guarantor no. 1/2019");

GIVEN the documentation in the deeds;

HAVING REGARD to the observations of the Office made by the Secretary General pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and operation of the office of the Guarantor for the protection of personal data, in www.gpdp.it, doc. web n. 1098801;

Rapporteur Dr. Agostino Ghiglia;

1. Introduction

From a report received by the Authority in the month of XX it emerged that the company Amiu s.p.a. (hereinafter, the company), manager of the municipal waste collection service for the Municipality of Taranto (hereinafter, the Municipality), has installed some video cameras in order to identify and sanction illegal behavior.

From what is documented in the report, the company would have disseminated, through the publication in its Facebook profile, some videos and some images, collected through the video surveillance systems installed in the municipal area, from which some interested parties would be identifiable.

2. The preliminary activity

With a note from the XX, in response to the Authority's request for information (prot. No. XX of the XX), the company stated that:

- “With the Trade Union Ordinance no. 22 of 28/03/2012, [...] the assignment to the staff [of the company], wholly owned [by the Municipality], of the functions of ascertaining and immediately challenging administrative offenses deriving from the violation of municipal regulations on waste disposal [...] ";
- "given the rampant phenomenon of waste abandonment, in order to contain these acts of incivility, the Administration of the Municipality [...] and [... the company], have shared the desire to install in the most sensitive sites, where abandonment are repeated, video surveillance systems / camera traps ";
- "the Municipality [...] with the Trade Union Decree Prot. [...] of the XX, has given the task of ecological auxiliaries to the Employees [... of the company]";
- "in this Decree, the methods of transmission of the offenses are also indicated: " will transmit the reports of ascertainment of the infringements, with the imposition of the sanction, to the Local Police Department of Taranto, which will take care of the consequential obligations relating to the verification of the reduced payment or to the activation of the procedure pursuant to Article 18 of Law no. 689/81 […] ".

Attached to this note, the company has provided a model of the administrative offense assessment report drawn up on paper jointly held by the company and the local police force of the Municipality, in which explicit reference is made to the circumstance that "the assessment was detected through images recorded by a special mobile video surveillance camera […] ”(annex 4), an example of an information sign that would detect the presence of a video camera (annex 6); as well as some images published on the company's Facebook profile (annex 7).

With regard to the latter two attachments mentioned above, it is noted that the information sign that would detect the presence of a camera (Annex 6) does not indicate the methods with which the interested parties (i.e. not only the subjects to whom an administrative violation is contested, but all natural persons who enter the range of action of the cameras) can receive

complete information on second-level processing (see articles 5, 12, 13, 14 of the Regulation; paragraphs 117-119 of the "Guidelines 3 / 2019 on the processing of personal data through video devices "of the European Committee for the Protection of Personal Data, adopted on 29 January 2020). Nor did it emerge, from the documents, that the Municipality took steps to draw up this information and bring it to the attention of the interested parties, for example by publishing it on its institutional website. Furthermore, from the images published on the company's Facebook profile (Annex 7, pages 2 and 3 of the note of the XX), it is ascertained that there is no signage containing the information in some areas subject to video surveillance.

In response to a request for information from the Authority, the Municipality, with a note of the XXth, declared, among other things, "from the analysis of the documentation available to the individual divisions, there is no agreement and / or formal deed for the processing of personal data between this municipality and AMIU SPA regarding the supervision of the environmental service through video surveillance systems, however named. Instead, there is only the specification for the establishment and definition of the tasks of the Environmental Inspector referred to in DGC no. 241 of 25-06-2021, which is attached in copy, which in article 12 governs the confidentiality aspects of environmental inspectors to be authorized [...] there are no formal instructions or agreements or delegations between the Municipality and Amiu SPA in this regard to the processing of personal data relating to the video surveillance systems used by the aforementioned company, except for the provisions of the aforementioned disciplinary for the establishment and definition of the duties of the Environmental Inspector ".

With a note of the XX, in response to a further request for information from the Authority (prot. No. XX of the XX), the company sent the "agreement pursuant to art. 28 of EU REG 2016/679 ", signed with the Municipality on January 14, 2022. It follows that the company participated in the treatment in question, starting from March 28, 2012 and until January 14, 2022, without its role, from the point of view of the protection of personal data it had been correctly defined by the Municipality, in violation of art. 28 of the Regulation.

Finally, it is noted that, from the documents, the impact assessment on data protection pursuant to art. 35 of the Regulation, which is always required in the case of large-scale systematic surveillance of an area accessible to the public and when new technologies are used (including the so-called intelligent camera traps used by the company).

For these reasons, with a note dated XX (prot. No. XX), the Office, on the basis of the elements acquired, notified the Municipality, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in art. 58, par. 2, of the Regulation, inviting the Municipality to produce defensive writings or documents to the

Guarantor or to ask to be heard by the Authority (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 the aforementioned note, the Office found that the Municipality has put in place, through the company, a processing of personal data of citizens through a video surveillance system in the absence of suitable information, which must be given "at the moment in which personal data are obtained ", with consequent violation of the principle of" lawfulness, correctness and transparency ", pursuant to art. 5, par. 1, lett. a) of the Regulation and of the articles 12, 13 and 14 of the Regulations, in the absence of appropriate discipline of the relationship with the company as "data processor", before the start of the treatment itself, in violation of art. 28 of the Regulation (formerly art. 29 of the previous Code) as well as in the absence of impact assessment, in violation of art. 35 of the Regulation.

With the note of the XXth the Municipality sent to the Guarantor its defense writings in relation to the notified violations, limiting itself, in essence, to attaching the "agreement for the protection of personal data and appointment as external data processor" of the undersigned company on January 14, 2022 (Annex 3), a communication to the company regarding compliance with certain obligations, including that of affixing, in the areas subject to video surveillance, the signs represented therein containing the information on the processing of personal data and to provide Common is an overall survey of the cameras installed and the technical and organizational measures adopted (Annex 4), a warning to the company to "disseminate the images being videotaped on any channel (website, social network or other)" in compliance with the agreement undersigned (Annex 5), a reply note from the company regarding the commitment to comply with the aforementioned obligations and formalities required by the Municipality of l XX (att. 7).

3. Outcome of the preliminary investigation

Pursuant to the regulations on the protection of personal data, the processing of personal data carried out by public entities (such as the Municipality of Taranto) is lawful only if necessary "to fulfill a legal obligation to which the data controller is subject" or " for the execution of a task in the public interest or connected to the exercise of public authority vested in the data controller "[art. 6, par. 1, lett. c) and e)]. Municipal solid waste management is one of the institutional activities entrusted to local authorities.

3.1 The principle of "lawfulness, correctness and transparency" and information to interested parties

Even in the presence of a condition of lawfulness, in any case, the data controller is required to respect the principles of data

protection, including those of "lawfulness, correctness and transparency", according to which the data must be “processed in a lawful, correct and transparent manner towards the data subject” (Article 5, paragraph 1, letter a) of the Regulation).

From the documentation on file it emerges that, from the month of XX (month in which the supply contract of the video surveillance system was signed with the company ITS s.r.l - annex 5 to the note of the XX of the company), the treatment is carried out in violation of the obligation that requires the data controller to provide the interested parties with prior information, in accordance with the provisions of art. 12, 13 and 14 of the Regulation.

3.2 Appointment of the data controller

For the purposes of compliance with the legislation on the protection of personal data, it is necessary to precisely identify the subjects who, for various reasons, can process personal data and clearly define their respective powers, in particular that of owner and manager of the treatment and subjects who operate under their direct responsibility (Article 4, paragraph 1, point 7 of the Regulations and Articles 28 and 29 of the Code).

In particular, the owner is the subject on whom the decisions regarding the purposes and methods of processing the personal data of the interested parties fall as well as a "general responsibility" on the treatments put in place (see art. 5, par. 2 so-called "accountability "And 24 of the Regulation), even when these are carried out by other subjects" on its behalf "(cons. 81, art. 4, point 8) and 28 of the Regulation; cf. also provision no. 81 of 7 March 2019, doc. web 9121890; provision no. 160 of 17 September 2020, doc. web 9461168; provision no. 294 of 22 July 2021, doc. web 9698724, provision no. 351 of 29 September 2021, doc. web 9716256).

The relationship between owner and manager must be governed by a contract or other legal act, stipulated in writing which, in addition to mutually binding the two figures, allows the owner to give instructions to the manager and provides, in detail, which is the subject matter governed. , the duration, the nature and the purposes of the processing, the type of personal data and the categories of data subjects, the obligations and rights of the owner. The Data Processor is therefore entitled to process the data of the interested parties "only on the documented instruction of the owner" (Article 28, paragraph 3, letter a) of the Regulation).

The Regulation also governed the obligations and other forms of cooperation to which the data controller is required when acting on behalf of the owner and the scope of their respective responsibilities (see articles 30, 33, par. 2 and 82 of the Regulation) .

Based on art. 24 of the Regulation, taking into account the nature, scope, context and purposes of the processing, as well as the risks with different probability and severity for the rights and freedoms of individuals, it is primarily the responsibility of the data controller. implement adequate technical and organizational measures to guarantee, and be able to demonstrate, that the processing is carried out in accordance with the Regulations. These measures must also be reviewed and updated as necessary.

From what emerged during the investigation, the municipal solid waste management service was entrusted, on March 28, 2012, to the company, with which an "agreement for the protection of personal data was signed and an external treatment "only on January 14, 2022.

It follows that starting from March 28, 2012 and until January 14, 2022, the company participated in the processing of the personal data in question without its role being properly defined by the owner, in violation of art. 28 of the Regulation (formerly Article 29 of the previous Code).

3.3. The Impact Assessment

The documents do not show that the impact assessment on data protection has been carried out, which is always required when a processing may involve a high risk for the rights and freedoms of the persons concerned, due, for example, to the systematic monitoring of their behavior, of the large number of stakeholders or for the innovative use or application of technological or organizational solutions (see Article 29 Group Guidelines on data protection impact assessment (WP248) adopted on 4 April 2017 , as last amended and adopted on 4 October 2017).

The violation of art. 35 of the Regulation which obliges the data controllers to carry out the impact assessment before starting the processing, also considering that this tool is suitable for proving the data controller's accountability towards the processing carried out.

4. Conclusions

In light of the aforementioned assessments, it is noted that the statements made by the data controller in the defense writings whose truthfulness may be called upon to answer pursuant to art. 168 of the Code although worthy of consideration, they do not allow to overcome the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the filing of this procedure, however, none of the cases provided for by the art. 11 of the Guarantor Regulation n. 1/2019.

From the checks carried out on the basis of the elements acquired, also through the documentation sent by the data controller,

as well as from the subsequent evaluations, the non-conformity of the treatments carried out by the Municipality concerning the processing of data carried out in the context of waste management was ascertained. urban solids.

As a preliminary point, it is noted that, even if the conduct subject to the investigation by the Municipality began before the date of full application of the Regulation, in order to determine the applicable rule in terms of time, the principle of legality must be recalled as per 'art. 1, paragraph 2, of law no. 689 of 11/24/1981 which, in providing as "The laws that provide for administrative sanctions are applied only in the cases and times considered in them", asserts the recurrence of the principle of the tempus regit actum. The application of this principle determines the obligation to take into consideration the provisions in force at the time of the committed violation. In the case that concerns us, this moment - considering the permanent nature of the contested conduct - must be identified at the moment of cessation of the unlawful conduct, which from the documents of the investigation appears to have lasted at least until January 14, 2022, i.e. after the 25th May 2018, the date on which the Regulation became fully applicable.

The preliminary assessments of the Office are therefore confirmed and the unlawfulness of the processing of personal data carried out by the Municipality is noted, as it occurred in a manner that did not comply with the general principles of processing, in the absence of suitable information, in the absence of regulation of the role played by the company as "data processor", and in the absence of an impact assessment, in violation of Articles 5, 12, 13, 14, 28 and 35 of the Regulation.

The violation of the aforementioned provisions makes the administrative sanction applicable pursuant to art. 58, par. 2, lett. i), and 83, para. 4 and 5, of the same Regulation, as also referred to by art. 166, paragraph 3, of the Code.

For the sake of completeness, it is represented that, regarding the publication on Facebook by the company of the images collected by the video surveillance system, taking into account that it takes place on the official page of the company, given that the publication is an ultronic treatment compared to the collection for the purpose of contesting the administrative offenses and considering that no elements have emerged from the investigation that lead this further treatment to an initiative of the Municipality, it is believed that the same is attributable to the sole and exclusive responsibility of the company, whose assessments regarding the lawfulness of the treatment carried out will be the subject of an autonomous provision.

5. Corrective measures (Article 58, par. 2, letter d), of the Regulation)

With regard to some violations contested above, taking into account the statements made by the data controller, some critical issues remain.

In the first place, with regard to the information to be provided to the interested parties, with the note of the XXth the Municipality sent to the Authority a communication (annex 4) sent on the XXth to the company, also containing an invitation to affix, in the areas subject to to video surveillance, the attached signs containing the information on the processing of personal data, as well as the company's response note regarding the commitment to comply with this fulfillment of the XXth (Annex 7). In this note, the company actually declares "the purchase of the signs to be installed in the supervised areas has been started as indicated in Annex 1 of your communication in question". There is therefore no evidence of the actual affixing of the aforementioned signs containing suitable information to the interested parties.

Furthermore, with regard to the impact assessment referred to in art. 35 of the Regulation, similarly, in the communication (Annex 4) sent on the 20th by the Municipality to the company, the transmission of the list of the video traps installed, as well as the description of the technical and organizational measures adopted, found with the reply note of the company of the XX (annex 7) but the impact assessment on the treatment in question has not been carried out.

Having said that, it is considered necessary, pursuant to art. 58, par. 2, lett. d), of the Regulations, to order the Municipality, within thirty days of notification of this provision, to:

1. ensure that appropriate information is provided to interested parties, including through the installation of signs in the areas subject to video surveillance (Articles 13 and 14 of the Regulations);

2. carry out the impact assessment on data protection (Article 35 of the Regulation).

Pursuant to art. 157 of the Code, the Municipality will have to communicate to this Authority what initiatives have been undertaken in order to implement the provisions of this provision in the previous points 1) and 2), and in any case to provide adequately documented feedback, within thirty days from notification of this provision.

6. Adoption of the injunction order for the application of the pecuniary administrative sanction and ancillary sanctions (articles 58, par. 2, lett. I 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, taking into account art. 83, par. 3, of the Regulations, in this case the violation of the aforementioned provisions is subject to the application of the same administrative fine 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.

For the purposes of applying the sanction, it was considered that the treatment started from March 2012 and is still in progress, potentially concerned the data of all citizens involved in the management of the municipal solid waste service, in violation of the principle of "lawfulness, correctness and transparency" pursuant to art. 5 of the Regulations, in the absence of the provision of the information to the interested parties, in the absence of an impact assessment on data protection and in the absence of definition of the relationship with the company involved in the processing as "data processor".

This violation was brought to the attention of the Authority through a report and the Municipality, to date, has not taken all measures to mitigate the possible risks for the interested parties.

On the other hand, the non-malicious behavior of the violation and the absence of previous violations against the Municipality are highlighted.

Due to the aforementioned elements, assessed as a whole, it is deemed necessary to determine pursuant to art. 83, par. 2 and 3, of the Regulations, the amount of the pecuniary sanction, provided for by art. 83, par. 5, lett. a) of the Regulations, to the extent of € 150,000 for the violation of Articles 5, 12,13, 14, 28 and 35 of the Regulation as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same Regulation.

Taking into account the number of interested parties, the failure to provide the information and the failure to define the role of the data controller, it is believed that the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019.

Finally, it is believed that the conditions set out in art. 17 of Regulation no. 1/2019.

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1, lett. a) of the Regulations and art. 144 of the Code, notes the unlawfulness of the processing of personal data carried out by the Municipality of Taranto, for the violation of Articles 5, 12, 13, 14, 28 and 35 of the Regulations, in the terms set out in the motivation

ORDER

to the Municipality of Taranto, in the person of the pro-tempore legal representative, with registered office in Piazza Municipio n. 1 - 74121 - CF 80008750731 - to pay the sum of 150,000 euros as a pecuniary administrative sanction for the violations mentioned in the motivation; 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 sanction imposed;

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to the Municipality of Taranto:

- to pay the sum of € 150,000 - 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 thirty 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;

- pursuant to art. 58, par. 2, lett. d) of the Regulations, to conform the processing to the provisions of the Regulations, adopting the corrective measures indicated in paragraph 5 of this provision, no later than 30 days from the date of receipt of the same. Failure to comply with an order formulated pursuant to art. 58, par. 2, of the Regulations, is punished with the administrative sanction referred to in art. 83, par. 6, of the Regulations;

- pursuant to art. 58, par. 1, lett. a), of the Regulations, and of art. 157 of the Code, to communicate which initiatives have been undertaken in order to implement the provisions of the aforementioned par. 5, and in any case to provide feedback, adequately documented, no later than 30 days from receipt of this provision. Failure to respond to a request made pursuant to art. 157 of the Code is punished with an administrative sanction, pursuant to the combined provisions of art. 83, par. 5, of the Regulation and 166 of the Code;

HAS

the publication of this provision on the website of the Guarantor, pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019;

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lett. u), of the Regulations, violations and measures adopted in compliance with art. 58, par. 2, of the Regulation.

Pursuant to art. 78 of the Regulation, of art. 152 of the Code and 10 of Legislative Decree no. 150/2011, 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 28, 2022

THE VICE-PRESIDENT

Cerrina Feroni

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei

* The provision was challenged